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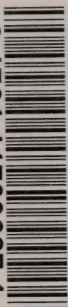
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Returns and message
relative to the Act of the
Legislature of New Brunswick,
passed in 1871, respecting
common schools in that
province.

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RETURNS AND MESSAGE

A MESSAGE TO THE

HOUSE OF COMMONS OF THE PARLIAMENT OF GREAT BRITAIN

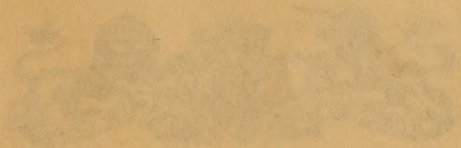
PRESENTED BY

MR. J. A. H. H. H.

COMMON SCHOOLS IN THAT PROVINCE.

1871

PRINTED BY ORDER OF PARLIAMENT.



PRINTED BY J. S. BARNES, 25, AND 26, ADELPHI, LONDON.

1871

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Canada. Secretary of State, Dept. of the

RETURNS AND MESSAGE

RELATIVE TO THE

ACT OF THE LEGISLATURE OF NEW BRUNSWICK,

PASSED IN 1871,

RESPECTING

COMMON SCHOOLS IN THAT PROVINCE.

PRINTED BY ORDER OF PARLIAMENT.



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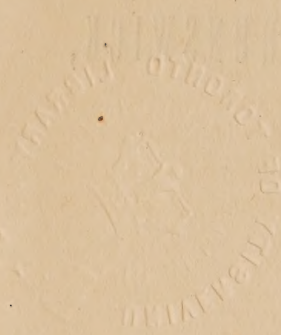
OTTAWA:

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1873.

RECEIVED

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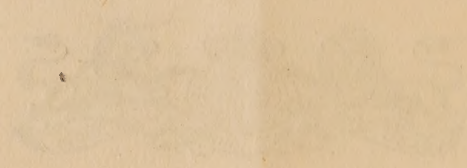


PASSED BY

1874

COMMON SCHOOLS THAT PROVE

MINISTRY OF EDUCATION



OFFICE

PRINTED BY J. H. TAYLOR, 21 AND 23, NORTH STREET

1878

RETURN

To an Address of the House of Commons, dated 12th March, 1873; For Copies of all Correspondence had in pursuance of a Resolution adopted on 30th May last (1872), by the House of Commons of Canada, between the Government of the Dominion, the Law Officers of the Crown in England, and the Judicial Committee of the Privy Council, in relation to the Act passed, in 1871, by the Local Legislature of New Brunswick, respecting Common Schools in that Province, together with all Documents relating to the subject, placed in the hands of the Dominion Government since the adoption of the said Resolution.

By command.

J. C. AIKINS,

Secretary of State.

Department of the Secretary of State,
OTTAWA, 18th March, 1873.

SCHEDULE.

	Pages.
1. Secretary of State for the Provinces to Lieut.-Governor of New Brunswick, 9th November, 1872, with Order in Council of 6th November, 1872; and Report of Minister of Justice, 30th October, 1872	2 & 3
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16. Order in Council, 13th March, 1873.....	65

No. 142.

OTTAWA, 17th March, 1873.

SIR,—In compliance with your order of reference of the 13th inst., I have the honor to transmit to you copies of all the documents on record in this Department, on the subject of the Act passed in 1871, by the Legislature of the Province of New Brunswick, respecting Common Schools in that Province, as called for by the House of Commons in their Address of the 12th inst.
No. 84. A Schedule of the documents is annexed.

I have the honor to be, Sir,
Your obedient servant,

E. H. MEREDITH,
Under Secretary of State
For the Provinces

E. Parent, Esq.,
Under Secretary of State for Canada.

(N. B.—No. 39.)

OFFICE OF THE SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 9th November, 1872.

No. 626.

SIR,—I have the honour to enclose, for the consideration of your Government, a Minute of the Governor General in Council, together with a printed copy of the Report, (No. 1392.) therein referred to, of the Honorable the Minister of Justice, respecting 6th Nov., 1873. the School Act passed in 1871, by the Legislature of the Province of New Brunswick.

I am to request that you will have the goodness to communicate to me any remarks you may be advised to make in connection with the Minute, and may desire to have transmitted to the Right Honorable the Secretary of State for the Colonies.

I have, &c.,

(Signed,) JOSEPH HOWE,
Secretary of State for the Provinces.

The Hon. L. A. Wilmot,
Lieut.-Governor, Fredericton.

The Earl of Dufferin to the Earl of Kimberley.

(Copy.)—No. 85.

GOVERNMENT HOUSE,
OTTAWA, 6th November, 1872.

MY LORD,—I have the honour to enclose a Copy of a Report of a Committee of the Privy Council of the Dominion of Canada, approved by me on the 6th instant, and accompanied by a printed copy of a Report from the Minister of Justice, Nov. 6, 1873. relative to an Act of the Legislature of New Brunswick, relating to Common Schools.

My Ministers have requested me to forward these documents to your Lordship, in accordance with a Resolution adopted by the House of Commons of Canada, on the 30th May last. A copy of this Resolution is given with the other documents in the accompanying Report.

I have, &c.,

(Signed,) DUFFERIN.

The Right Honorable
The Earl of Kimberley,
&c. &c. &c.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 6th November, 1872.

The Committee of the Privy Council have had under consideration the annexed Report, dated 30th October, 1872, from the Honorable the Minister of Justice, submitting, in accordance with the Resolution adopted by the House of Commons on the 30th May last, a statement for transmission to Her Majesty's Secretary of State for the Colonies, in order that the opinion of the Law Officers of the Crown in England, and if possible, the opinion of the Judicial Committee of the Privy Council, may be obtained, as to the right of the New Brunswick Legislature to make such changes in the School Law as deprived Roman Catholics of the privileges they enjoyed at the time of the Union, in respect of religious education in the Common Schools, with the view of ascertaining whether the case comes within the terms of the 4th sub-section of the 93rd clause of "The British North America Act, 1867," which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act.

The Committee advise that a Copy of this Minute, with the annexed statement, be transmitted by Your Excellency to the Right Honorable the Secretary of State for the Colonies, with a view to the carrying out the terms of the Resolution referred to ; also,

That a copy of the statement and this Minute be forwarded to the Lieutenant Governor of New Brunswick, and to the Right Rev. John Sweeny, D.D., Bishop of St. John, N. B., for any remarks they may think proper to make, and may desire to be transmitted to the Right Honorable the Secretary of State for the Colonies for consideration in connection with the minute.

Certified,

(Signed,)

W. A. HIMSWORTH,
Clerk, Privy Council, Canada.

To the Honorable the Secretary of State
For the Provinces, &c., &c.,

DEPARTMENT OF JUSTICE,
OTTAWA, 30th October 1872.

The undersigned has the honor to report :—

1. That upon the 30th May last, the House of Commons of Canada passed the following Resolution :—

"That this House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that Province, and hopes that it may be so modified during the next Session of the Legislature of New Brunswick as to remove any just grounds of discontent that now exist, and this House deems it expedient that the opinion of the Law Officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council, should be obtained as to the right of the New Brunswick Legislature to make such changes in the School Law as deprived the Roman Catholics of the privileges they enjoyed at the time of the Union, in respect of religious education in the Common Schools, with the view of ascertaining whether the case comes within the terms of the 4th sub-section of the 93rd clause of the British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act. The House divided and it was resolved in the affirmative."

2. That the sections of the British North America Act, 1867, to which allusion is above made, are as follows :—

EDUCATION.

"93. In and for each Province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions :—

(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the Union :

(2.) All the powers, privileges and duties at the Union, by law conferred and imposed in Upper Canada, on the Separate Schools and School Trustees of the Queen's Roman Catholic subjects shall be, and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec :

(3.) Where in any Province a system of separate or dissentient schools exists by law at the Union, or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor General in Council, from any act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects, in relation to education :

(4.) In case any such Provincial law, as from time to time seems, to the Governor General in Council, requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section, is not duly executed by the proper Provincial authority in that behalf, then and in every such case and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

3. That the Act of the Province of New Brunswick, of 1871, referred to in the Resolution of the House of Commons, is as follows :—

34TH VIC., CAP. XXI, 1871.

An Act relating to Common Schools.

[*Passed 17th May, 1871.*]

"Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows :—

PRELIMINARY.

"1. This Act may for all purposes be cited as "The Common Schools Act, 1871."

"2. The following terms shall in this Act mean as herein defined, unless there is something in the context repugnant thereto :—

" 'Schools' shall mean all Schools established under this Act :

" 'District,' that portion of territory into which the Province shall be divided for local School government :

" 'Border District,' a District embracing portions of two or more Parishes :

" 'Rate-payer,' any person rated in the Parish Assessment List, in respect of real or personal property or income :

" 'Clerk of the Peace' and 'County Treasurer' shall severally include the Secretary-Treasurer of incorporated Counties where the duties are performed by such officer :

" 'Sessions' shall include the County Council of incorporated Counties.

"3. The Governor in Council shall appoint a Chief Superintendent of Education at a salary of twelve hundred dollars per annum, besides travelling expenses, charges, and contingencies of offices, and a clerk or assistant at a salary of ten hundred dollars per annum.

"4. The Governor in Council may issue warrants in the ordinary manner, for the payment of the several allowances, salaries and services provided for hereby.

BOARD OF EDUCATION.

"5. The Governor, the Members of the Executive Council, the President of the University of New Brunswick, and the Superintendent of Education, shall constitute a Board of Education; the Governor, with three Members of the Executive Council, and the Superintendent, who shall act as Secretary, shall constitute a quorum.

"6. The Board of Education shall have power :—

"(1.) To provide for the establishing and efficient working of a Training and Model School; to appoint a Principal at a salary of one thousand dollars, who shall, with the approval of the Board, appoint such assistants as may be found necessary, and to make such allowances for the expenses of pupil teachers attending the school as shall be deemed proper, not exceeding twenty-four dollars :

"(2.) To appoint fourteen Inspectors, and the sum of four thousand dollars shall be at the disposal of the Board to provide for such service; but as far as it shall deem practicable, each County shall constitute an Inspectoral District, and the Board shall have power to prescribe the qualifications for Inspectors and their duties, where not herein prescribed, and to provide for the uniform certification of all candidates for the same :

"(3.) To divide the Province into School Districts, and from time to time to create new Districts, or alter boundaries, having due regard to the number of children, and the ability of each district to support one or more efficient schools; towns, villages, and populous localities, having a community of interests, shall, as far as practicable, form a single district, and no district shall contain less than fifty resident children, between the ages of five and sixteen years, unless the area of such district shall contain four square miles; and in the erection of Districts the Board may obtain such assistance as may be found necessary :

"(4.) To make regulations for the organization, government and discipline of schools and for the classification of schools and teachers, to appoint examiners of teachers, and to grant and cancel licenses :

"(5.) To prescribe text books and apparatus for the use of schools, books for school libraries, and plans for the construction and furnishing of school houses :

"(6.) To determine all appeals from the decisions of Inspectors, and make such orders thereon as may be required :

"(7.) To prepare and publish regulations under which moneys may be drawn and expended :

"(8.) To make such regulations as may be necessary to carry into effect this Act, and generally to provide for any exigencies that may arise under its operation :

SUPERINTENDENT.

"7. It shall be the duty of the Chief Superintendent of Education, and he is hereby empowered :—

"(1.) To have, subject to the Board of Education, a general supervision and direction of the Inspectors and Schools :

"(2.) To enforce the provisions of this Act, and the regulations and decisions of the Board of Education :

"(3.) To apportion the County School Fund in accordance with the provisions of this Act, withholding the same, and all Provincial aid, from districts presenting a false or insufficient return, and dealing with forfeited balances as directed by the Board of Education :

"(4.) To furnish the Clerks of the Peace with the numbers and boundaries of the districts within their respective counties, and from time to time, as new districts are created, or boundaries altered, to furnish such new boundaries; and the certificate of the Clerk of the Peace shall be evidence of such boundaries :

"(5.) To cause copies of this Act, with regulations of the Board of Education, together with all necessary forms and instructions, to be published and furnished gratuitously to inspectors, trustees and teachers :

"(6.) To prepare annually a Report upon the schools subject to his supervision, accompanied with full statistical tables and detailed accounts of the expenditures of the moneys appropriated under this Act, and offer suggestions on educational subjects ; which Report shall be laid before the Legislature within ten days after the opening of the next succeeding session thereof.

INSPECTORS.

"8. It shall be the duty of each of the Inspectors, and he is hereby empowered :—

"(1.) To visit, at least semi-annually, each school within his Inspectoral District ; to examine the schools, and School-houses and premises, to inspect the School Register, and generally to ascertain if the provisions of the School Laws are there carried out and obeyed, and to transmit to the Superintendent a Report of such inspection as often as the same may be required by the Board of Education :

"(2.) To furnish trustees and teachers with such information as they may require respecting the operation of this Act and the performance of their duties, and to advise with the teachers in all that may tend to promote their efficiency, and the character and usefulness of their schools :

"(3.) To aid in carrying out a uniform system of education, and generally in giving effect to this Act and the regulations of the Board of Education :

"(4.) To appoint a trustee or trustees of schools in cases hereinafter provided, and to investigate and determine upon complaints respecting the election of trustees :

"(5.) To determine and report to the Superintendent, the districts, in his opinion, entitled during the following year to special aid as poor districts, with the grounds of such opinion.

MODE OF SUPPORT.

"9. The salaries of teachers shall be provided for from the three following sources, viz. :—Firstly, the Provincial Treasury ; secondly, the County School Fund ; thirdly, District Assessment. All other items of fixed or current expenditure shall be provided for by district or local assessment, and the purchase of school houses and lands, and erection of school buildings, may be provided for by loan extending over a period not exceeding seven years.

PROVINCIAL AID.

"10. Legally qualified Teachers, employed in schools supported and conducted in conformity with this Act, shall, until as hereinafter specified, receive from the Provincial Treasury, according to the following rates for the school year :—Male teachers of the first class, one hundred and fifty dollars ; of the second class, one hundred and twenty dollars ; of the third class ninety dollars. Female teachers of the first class, one hundred and ten dollars ; of the second class, ninety dollars ; of the third class, seventy dollars. Assistant teachers, if provided with a class room, separate from the school room, but within the same building, and regularly employed at least four hours each day, shall receive one-half of the foregoing sums, according to the class of license—one-half the amounts named shall be paid semi-annually or rateably according to the time the teachers or assistants shall have satisfactorily taught in schools as aforesaid within the scholastic year.

"11. From and after the period of five years from the time this Act goes into force, the Provincial aid to teachers and assistants, qualified and employed as aforesaid, shall be regulated in part according to the class of license, and in part according to the quality of the instruction given in the school, as determined by the semi-annual examination of pupils by an Inspector, as follows :—For the school year, or rateably as above, male teachers of the first class, one hundred and ten dollars ; of the second class, eighty dollars : of the third class, sixty dollars. Female teachers of the first class, seventy dollars ; of the second class fifty dollars ; of the third class, forty dollars. In addition, each teacher whose school shall be reported by the Inspector, in respect of quality of instruction, as entitled in any half year to the first rank, shall receive for the half year, at the rate of forty dollars per

year ; the second rank, at the rate of twenty-five dollars ; the third rank, at the rate of ten dollars, or rateably as above ; each such assistant shall receive a sum equal to one-half the grants to teachers.

COUNTY ASSESSMENTS IN AID OF SCHOOLS.

“ 12. The Clerk of the Peace in each county shall add to the sum annually voted for general County purposes at the General Sessions, a sum sufficient, after deducting costs of collection, receiving and disbursing, and probable loss, to yield an amount equal to thirty cents for every inhabitant of the county, according to the last preceding census ; and the sum so added shall form and be a portion of the County rates, and shall be levied and collected as other County rates, and shall form a County School Fund. And the Clerk of the Peace shall forthwith notify the Superintendent of the amount so ordered to be levied ; and when the same shall have been collected, the County Treasurer shall notify the Superintendent of the amount thereof. Such sum shall be held by the County Treasurer, subject to the order of the Superintendent. The County Treasurer shall at the time of ordering the County rates give a bond to the Queen, with two sureties, in the probable amount of such moneys, conditioned for the faithful accounting for the same, which shall be lodged with the Clerk of the Peace ; but a bond once given shall continue in force until cancelled, and remain a continuing security ; and the Treasurer shall receive one per cent. for receiving and disbursing such moneys.

“ 13. The Superintendent shall apportion one-half of such amount at the close of each half year to the trustees of schools conducted in accordance with this Act, and the regulations of the Board of Education, to be applied towards the payment of teachers' salaries, and in the following manner :—There shall be allowed to the Trustees of each district, in respect of each qualified teacher, exclusive of assistants, by them employed, the sum of twenty dollars per year, and the balance of such amount shall be apportioned to the Trustees according to the average number of pupils in attendance at each school, as compared with the whole average number of pupils attending the common schools of the county, and the length of time in operation ; one-half the sum assessed as a county rate in the several counties for the support of schools, shall be advanced from the Provincial Treasury at the close of the spring term, to be refunded in October following, after the first day of which month, interest on such advance will be charged against the county.

DISTRICT ASSESSMENT.

“ 14. Any sum required by any district in further payment of teachers' salaries, over and above the sums as above provided by the Province and county, and any sum required for other school purposes during the year, including the purchase, rent or improvement of school grounds, the purchase, erection, repair, furnishing, care, and insurance of school houses and out buildings, the purchase of fuel, maps or apparatus prescribed, and books, the payment of interest on money borrowed by the district, or any other expenses required in providing an efficient school, shall be determined by the School District in its school meeting as hereinafter provided ; and any amount so determined upon shall be a charge upon the district, and shall be levied as follows :—Every male person, twenty-one years of age and upwards, having resided in such district for the period of one month next previous to the levying of such assessment, shall be assessed and shall pay the sum of one dollar as a poll tax. The balance of the sum authorized to be assessed shall be levied on the real and personal property within the parish, and income of the residents of the districts, according to the taxable valuation of the same on the Parish Assessment List for the year, and upon the real and personal property situate within the district of non-residents of the parish, according to such valuation. Nothing herein shall render a person liable to pay for the support of the schools of the district more than one such poll tax in any one year.

“ 15. The Assessors shall make and return in the yearly assessment list a valuation of the real and personal property situate within each district of any non-resident of the parish, and a statement of the taxable value of the same, with the name or designation of

the district, and to this end the Trustees shall serve upon the Assessors a copy of the boundaries of their respective districts.

" 16. Real and personal property situate in a district, and belonging to a corporation, shall be subject to District Assessment, and the rates shall be payable by the President, agent, or manager, to the extent of the funds in his hands or under his control at the time of the demand, and shall be chargeable to the corporation by the party so paying. The principal place of carrying on business shall be deemed the place of inhabitance.

" 17. Any District Assessment, shall, so far as relates to so much of the same as depends upon the valuation of real estate, have reference back to the ownership of property at the time the assessment lists were made out by the Assessors, and shall, until levied, be continued as a charge upon the property, in respect of which the same was assessed, notwithstanding the same may, in the interval, have been alienated or disposed of.

" 18. Persons unable to pay, or the parents of deaf and dumb children, or persons resident more than two miles from the school-house in the district where they reside, or on Islands too sparsely populated to maintain a School, and too distant from the main land to permit children to attend school thereon, may be by the Trustees exempted either in whole or in part from the district rate, and the Trustees shall return to the annual school meeting a list of such exemptions.

AID TO POOR DISTRICTS.

" 19. Each Inspector shall, as directed by the Board of Education, determine and report to the superintendent what School Districts under his supervision may be entitled during the ensuing year, to special aid as poor districts, and the Superintendent may allow to the schools in such districts such amount, not exceeding one-third more on the classification of the teachers of such schools, from the Provincial Treasury, and one-third more per pupil from the County School Fund, than the allowance to other School Districts sharing such funds, as in his discretion may seem proper, taking into consideration the position and circumstances of such district.

THE SCHOOL DISTRICT.

" 20. The School District shall have power to elect Trustees and an Auditor, and to determine upon all questions of local or district support of schools in conformity with this Act.

" 21. An annual school meeting shall be held in every district on the second Thursday in January in each year, at ten o'clock in the forenoon; and such meeting, if the first to be held in any district, shall be held at a place in the district to be named by the Inspector, by notice posted at least six days previously in two of the most public places in the district.

" 22. Subsequent meetings shall be held in the school-house, if convenient, or in such place as the Trustees of the district may decide upon, who shall give notification of the same as above; but in case of want of proper parties, or of neglect, the Inspector may by similar notification, determine the time and place of meeting.

" 23. No person shall be entitled to vote at any school meeting on any question whatsoever, unless he shall be a rate-payer, either resident in the district or non-resident in the parish, and owning property in the district, such rate-payers to be hereinafter designated as rate-payers of the district, and unless he shall have paid all school rates imposed upon him for the then preceding year, in case any shall have been imposed.

" 24. At all meetings the majority of rate-payers of the district present shall elect from their number a Chairman to preside over the meeting, and a Secretary to record its proceedings; the Chairman shall decide all questions of order, and shall take the votes of qualified voters only, deciding according to the majority of votes, and shall give a casting vote in case of an equality of votes, and shall transmit to the Trustees within ten days

after the holding of such meeting, the minute of the proceedings thereof, signed by himself and the Secretary.

"25. If any person offering to vote at any meeting shall be challenged as unqualified, the Chairman shall require the person so offering to vote to make the following declaration:—"I do declare and affirm that I am a rate-payer of this district, that I have paid all School Rates imposed upon me within the last twelve months, and that I am legally qualified to vote at this meeting."—Whereupon the person making such declaration shall be permitted to vote on all questions proposed at such meetings; but if any person refuse to make such declaration, his vote shall be rejected; and if any person wilfully makes a false declaration of his right to vote, he shall be liable to a penalty of twenty dollars, to be recovered by the Trustees of the district for its use.

"26. School meetings shall be held at ten o'clock in the forenoon, and may be continued until four in the afternoon of the same day, and may be adjourned to the next day at ten, and continued as aforesaid, but no further adjournment shall take place; provided that after the first annual meeting the Trustees shall have power to call the meetings at such hour as they shall think proper.

27. At the annual school meeting, the district shall elect Trustees, or a Trustee, as hereinafter provided, and an Auditor of the school accounts of the coming year, and shall also decide what school accommodation shall be provided, and what amount shall be raised by the district for the support of teachers, to supplement the sum provided as aforesaid, by the Province and County, and shall also decide whether any and what sum shall be raised for the purchase or building of school uses, for the purchase or improvement of school grounds, or for general school purposes; and shall receive and decide upon the report of the Trustees.

"28. Special meetings may be held (1st) upon the call of the trustees, to fill an occasional vacancy occurring in the Board of Trustees, or for any necessary purposes other than that of voting money; and (2nd), upon the requisition of a majority of the rate-payers of the district, for the purpose of voting money, or adding to any amount previously voted for any purpose authorized by this Act; notice of which meetings, specifying the object thereof, shall be given by the Trustees, by posting notices of the time and place thereof in two of the most public places of the district, at least six days before the time of meeting.

"29. The school accommodation to be provided by the district shall, as far as possible be in accordance with the following arrangements:—

"For a district having fifty pupils or under, a house with comfortable sittings, with one teacher:

"For a district having from fifty to eighty pupils, a house with comfortable sittings and a good class room, with one teacher and an assistant:

"For a district having from eighty to one hundred pupils, a house with comfortable sittings and two good class rooms, with one teacher and two assistants, or a house having two apartments, one for an elementary and one for an advanced department, with two teachers. Or, if one commodious building cannot be secured, two houses may be provided in different parts of the district, with a teacher in each, one being devoted to the younger children, and the other to the more advanced.

"For a district having from one hundred to one hundred and fifty pupils, a house with two adequate apartments, one for an elementary, and one for an advanced apartment, and a good class room accessible to both, with two teachers, and, if necessary an assistant; or if the district be long and narrow, three houses may be provided, two for elementary departments, and one for an advanced department, the former being located towards the extremes of the district, and the latter at or near the centre.

"For a district having from one hundred and fifty to two hundred pupils, a house with three apartments, one for an elementary, one for an advanced, and one for a high school, and at least one good class room common to the two latter, with three teachers, and, if necessary, an assistant: or if necessary, schools may be provided for the different departments in different parts of the district:

" And generally, for any district having two hundred pupils and upwards, a house or houses with sufficient accommodation for different grades of elementary and advanced schools, so that in districts having six hundred pupils and upwards, the ratio of pupils in the elementary, advanced and high school departments, shall be respectively about eight, three and one.

" 30. A border district shall, for the purposes of inspection and district assessment, be deemed to belong to the parish in which the school-house is situate ; or if none, or if more than one, then in that in which the majority of the rate-payers reside.

TRUSTEES.

Their term of office, qualification, and corporate rights.

" 31. There shall be three Trustees for each district, who shall be qualified voters of the School District ; and the Trustees in each district shall be a body corporate, under the name of " The Trustees of School District number , in the Parish of , in the county of ;" and no such corporation shall cease by reason of the want of Trustees.

" 32. The Trustees shall remain in office for three years ; except that, of the first board of trustees, one of their number, to be determined by lot at the next annual meeting after appointment, shall go out of office at such meeting ; and another, to be determined by lot at the second annual meeting after appointment, shall go out of office at such last mentioned meeting.

" 33. At each annual meeting, a Trustee shall be elected in place of the one whose term of office is about expiring ; and the term of every such Trustee shall be three years.

" 34. A Trustee elected to fill an occasional vacancy, shall hold office only for the unexpired term of the person whose place he fills ; and any Trustee may, with his consent, be re-elected, otherwise he shall be exempted from serving for three years next after leaving office.

" 35. A Trustee may resign his office with the consent in writing of his co-trustees and Inspector ; without such consent, a Trustee refusing to act shall forfeit a sum of twenty dollars, to be collected by any rate-payer of the district, and for its use.

" 36. Every Trustee shall make the following declaration of office before the chairman of the school meeting :—" I will truly and faithfully, to the best of my judgment and ability, discharge the duties of the office of School Trustee." And, if any Trustee shall not make the declaration within ten days after notice of his election, his neglect shall be sufficient evidence of a refusal to serve under the last preceding section, except that a Trustee acting as such shall be liable to all the duties and responsibilities of a trustee.

" 37. Where a district, at the annual meeting, fails to elect Trustees, or to fill any vacancy occurring in the Trusteeship, or where a Trustee declines to act, a Trustee or Trustees shall be appointed, upon the written requisition of seven rate-payers in the district, by the Inspector, who, in case of a further neglect to act, shall have power to make further appointments.

" 38. No teacher shall be a Trustee ; and a continuous non-residence of six months by a trustee, shall cause the vacation of his office.

" 39. No Trustee shall be directly or indirectly interested otherwise than in his corporate capacity, in any contract provided for herein ; except that a Trustee may, with the consent of the Inspector, contract with the Board of Trustees for the sale and purchase of a school site or buildings.

" 40. The Trustees shall exercise all the corporate powers vested in them for the fulfilment of any contract or agreement made by them ; and, in case they, or any of them wilfully neglect or refuse to exercise such powers, the Trustee or Trustees so neglecting or refusing, shall be personally responsible for the non-fulfilment of such contract or agreement.

Duties and powers of Trustees with respect to school property.

“ 41. It shall be the duty of the Trustees, and they are hereby empowered : —

“ (1). To acquire, take, and hold for the corporation, any real or personal property, moneys, or income for school purposes, and to apply the same according to the terms on which the same were acquired or received, with power, when so authorized by the School District in annual meeting, or in meeting called for such purpose, to sell or dispose of the same, and apply the proceeds towards the payment of charges against the district for purchase or erection of school property, if such charges exist :

“ (2). To purchase or rent lands or buildings for school purposes ; contract for the erection and furnishing of school buildings ; repair, and keep in order, and insure the buildings and furniture ; procure maps, apparatus and books, and generally to provide for all school services as authorized by the school meeting :

“ (3). To borrow, when authorized by the school meeting, money for the purchase or improvement of grounds for school purposes, or for the purchase or building of school-houses, or for the furnishing of the same ; and such amounts shall be repaid by equal yearly instalments, not exceeding seven, with any interest accruing, to be assessed upon the district ; and the moneys so borrowed shall be a charge upon the district, and, for money so borrowed, the Trustees shall have power to give certificates of indebtedness :

“ (4). To determine the site of the school-houses, subject to the sanction of the Inspector ; and when a location for the erection of a school-house and necessary buildings has been so selected, ten rods at least from any dwelling-house in districts other than cities, towns, or villages, and the Trustees are unable to agree with the owner thereof for the purchase, they may lay out a school lot, not exceeding forty square rods, and cause the same to be appraised in manner following, that is to say :—The Trustees shall apply to a Justice of the Peace for a warrant, who is hereby required to grant the same, directed to either the Sheriff, Deputy Sheriff, or any constable within the county, commanding him to summon five disinterested freeholders of the county, not resident in the district, at a certain time to be named in such warrant, to examine such lands, the said Trustees or any one of them to be present ; and the said jury, who are to be sworn by any Justice of the Peace, shall proceed to assess the same, provided it appears to them that the Trustees had given personal notice to such owner of such inquisition, or that notice thereof had been posted in two public places of the district six days before the day of such inquisition ; and shall return the amount of such assessment to the Clerk of the Peace, and, on payment or tender of such damages, the Trustees may take and hold such lot.

With respect to Schools, School Teachers, Books, &c.

“ 42. It shall be the duty of the Trustees, and they are hereby empowered : —

“ (1). To provide school privileges, free of charge, for all children from five to twenty years of age inclusive, who may be resident in the district, and when authorized by the school meeting, improved school accommodation, as far as possible in accordance with the provisions of section twenty-nine, with power to admit to school privileges pupils from other districts ; and, if the Trustees shall deem it necessary, they may exact from such pupils a reasonable tuition fee :

“ (2). To regulate from time to time, with the aid of the teachers, the attendance of pupils in the several departments according to attainments ; and to suspend or expel any pupil from school whom the teacher may report to the Trustees as persistently disobedient, or addicted to any vice likely to affect injuriously the character of other pupils, until the Trustees and teacher shall receive from such pupil assurance of reform :

“ (3). To employ teachers for the district (the contract to be in writing), and to suspend or dismiss any teacher for gross neglect of duty, or for immorality ; and they shall forthwith transmit a written statement of the facts to the Superintendent, who, if satisfied of the correctness of such dismissal, shall not allow to such teacher further payment from the Provincial Treasury :

" (4). To visit, at least monthly, each school under their charge, and see that it is conducted according to this Act and the regulations of the Board of Education ; to notify the district of the opening or re-opening of the schools, to provide for the health of the school, and to see that the schools are properly supplied with the books provided by the Board of Education, and that no unauthorized books are used :

" (5). If any parent, master, or guardian, after notice from the Trustees that a child under the care of such person is unprovided with the necessary school books, shall refuse or neglect to furnish such child with the books required, the Trustees shall, subject to the power to exempt indigent persons, furnish them at the expense of the district, and the cost thereof may be collected from the parents, master, or guardian by warrant of the Trustees, as in case of assessed rates.

With respect to their Organization.

" 43. It shall be the duty of the Trustees, and they are hereby empowered to meet as soon as practicable after the annual election, or the appointment of Trustees, and appoint a Secretary to the corporation, who may be of their own number, and who shall forthwith give a bond to Her Majesty, with two sureties, in a sum at least equal to that to be raised by the district during the year, for the faithful performance of the duties of his office, and the same shall be forthwith lodged by the Trustees with the Clerk of the Peace for the county ; and such Secretary shall keep the records, accounts and moneys of the Board, collect and disburse all school moneys of the district, have charge of the school property, safely keep and deliver up when required to the Trustees the papers and moneys of the corporation, including the records of the school meetings, and perform all other duties which the Board may prescribe in relation to their corporate affairs. The Secretary shall be entitled to receive five per cent. commission on all sums collected by him, or under his direction, for the support of the school or schools, excepting in cases where payment shall voluntarily be made, when he shall receive two and one-half per cent. on the amount of their rate, and shall make a deduction to such persons of two and a half per cent.; and he shall be entitled to two and one-half per cent, on all sums collected by him or under his direction, for the purchase or erection of a new school-house or houses, and for the purchase and improvement of school grounds.

With respect to the Assessment and Collection of Rates.

44. It shall be the duty of the Trustees, and they are hereby empowered :—

(1). To furnish, in case the school meeting shall have determined to raise money for any school purpose, the Clerk of the Peace of the county in which the district or any part of it may be situate, a list of the persons resident in the district, and of persons owning property therein, being non-residents of the district ; and the Clerk of the Peace shall set opposite each name the amount on which each is liable to be taxed, as set out in the assessment lists for the year ; and for every list so furnished the Clerk of the Peace shall be entitled to receive from the Trustees a fee of twenty-five cents ; but if the number of persons on the list so furnished does not exceed twelve, the fee shall be twelve cents :

(2). To apportion the amount to be raised by the district in the following manner :—The sum of one dollar shall be levied as a poll tax as provided in Section fourteen, and the balance of the sum to be raised shall be levied by a fair apportionment according to the valuation contained in the above-mentioned list :

(3). To furnish to their Secretary a list of the assessments under the foregoing section, with instructions in writing thereon, signed by the Trustees, authorizing and directing the Secretary to collect from the persons therein named the amounts set opposite their names ; and the Secretary shall demand the several amounts from the persons so assessed, and in default of payment, the same shall be collected by the Secretary in the same manner, as near as may be, as other rates and taxes are collected under and by virtue of any laws relating to the collection thereof, and the Trustees shall retain such

assessment to the General Sessions, or to a Special Sessions, where appeals may be had and determined :

(4). In case of a judgment being recovered against the Trustees in their corporate capacity, they shall satisfy the same by forthwith causing an assessment to be made in the same manner as other assessments on the School District :

With respect to Reports, &c.

“ 45. It shall be the duty of the Trustees :—

“ To cause to be prepared and read, at the annual meeting, a report for the year then ending, which report shall, amongst other things, exhibit a full account of the receipt and expenditure of all school moneys during such year, and which account shall have been duly audited as hereinafter provided :

“ To prepare and forward to the Superintendent, within two weeks after the close of each school term, a true return, duly sworn to before a Justice of the Peace, of the state of the school, according to the form drawn up for that purpose by the Superintendent :

“ To call all meetings as provided for by this Act.

AUDIT OF TRUSTEES' ACCOUNTS.

“ 46. The Auditor appointed at the annual meeting shall, at least two weeks before the next annual meeting, call upon the Trustees to submit to him their accounts for the year, with all vouchers, agreements, &c., and shall examine into and decide upon the accuracy thereof, and whether the Trustees have truly accounted for, and expended for school purposes, the moneys received by them, and report upon such accounts at the annual meeting ; and if the Auditor object to the lawfulness of any expenditure made by the Trustees, they shall submit the matters in difference to such meeting, which may either determine the same or submit the same to the Inspector, whose decision shall be final.

TEACHERS.

“ 47. Every Teacher shall call the roll every morning and afternoon, and otherwise keep a daily register of the scholars in the manner prescribed by the Board of Education, which shall be open to inspection at all times ; he shall diligently and faithfully teach all the branches required to be taught in the school, according to the terms of his engagement with the Trustees, and according to the provisions of this Act, and shall maintain proper order and discipline therein ; and any teacher neglecting to keep an accurate register as aforesaid, shall forfeit the amount otherwise payable to him out of the Provincial Treasury.

“ 48. He shall have a care to the health and comfort of the school, and to such end shall enforce cleanliness, and report to the Trustees the appearance of any infectious or contagious disease in the school.

“ 49. He shall, during each half year, hold a public examination of the school, of which notice shall be given to the Trustees, and to the parents through the pupils ; he shall, through the pupils, give notice of all school meetings advertized by the Trustees.

“ 50. He shall make to the half-yearly return of the Trustees an affidavit in the following form :—

“ I, [name of teacher] a duly licensed teacher of the——— class, do swear that I have taught and conducted the school (or the——— department of the——— school), in——— district, in accordance with law, for the period of——— authorized teaching days, during the term ended——— A. D. 18—— ; that the School Register has been faithfully and impartially kept, and that to the best of my knowledge and belief the grand total days' attendance, made by the enrolled pupils in the said period, was——— [the number to be expressed in words at length] ;

that my agreement with the Trustees is lawful, and that there is no collusive understanding by which any portion of the agreement is to be made of no effect.

[Name of Teacher.]

Sworn at _____ this _____ day of _____

A. D. 18—, before me, _____, J. P.

SUPERIOR SCHOOLS.

" 51. When any district shall have engaged, with the consent of the Inspector, a competent teacher, and shall have raised for the support of such teacher the sum of two hundred dollars or upwards, it may receive from the Provincial Treasury a sum equal to the amount so raised, not exceeding three hundred dollars per annum, to be paid to the teacher, upon it appearing to the superintendent that the school has been satisfactorily taught, and that payment has been made to the teacher at the rate of two hundred dollars or upwards per annum by the trustees; but not more than one such school shall be allowed in any one parish.

LIBRARIES.

" 52. Whenever any School District shall raise a sum of money for the purpose of establishing a library, or adding thereto, the Board of Education may grant to it a sum equal to one-half the amount so raised, not to exceed twenty dollars in any one year, to be expended in the purchase of books therefor.

GRAMMAR SCHOOLS.

" 53. The Trustees of the Grammar School of any county may unite with the trustees of any district in such county for the management and support of the Grammar School, subject to the approval thereof by the Board of Education.

MISCELLANEOUS.

" 54. No order for assessment or proceedings of any school meeting shall, within two years after this Act comes into operation, be impeached before any Court for irregularity or defect of notices or other proceedings; but any party complaining may appeal to the Inspector within fourteen days after the act complained of, such appeal to be in writing and to set forth specifically the grounds thereof, and the Inspector shall forthwith examine into and decide the same; and the decision of the Inspector, subject to an appeal to the Superintendent within fourteen days after such decision, shall be final, and shall not be removed by *certiorari*; provided, however, that this shall not effect the right of appeal to the Sessions as hereinbefore provided for cases of undue assessment.

" 55. From and after the time limited to the preceding section, the Judge of the County Court shall, within twenty days after any school meeting within the counties in which he acts as Judge, receive and investigate any complaint respecting any business transacted at such meeting, and confirm it or set it aside, according as he may think that substantial justice requires, and direct the Trustees or Inspector to call another meeting for similar purposes, or make such order as the justice of the case may require, and shall order payment of the expenses of such determination as he may judge right.

" 56. All penalties and forfeitures under this Act shall be recovered and enforced by action of debt in any court of competent jurisdiction in the same manner as a private debt.

" 57. In all cases wherein a school-house has been built within any district, and is owned in shares, it shall be competent for the majority, in interest of the owners of shares, to sell and dispose of the same to the district, at any meeting duly held after ten

days' notice of the object thereof, at the price such meeting shall determine upon, or as may be realized at a public sale thereof duly advertized, and the proceeds of sale shall be divided amongst the proprietors in proportion to their shares in interest in the property.

CITY OF ST. JOHN AND CITY OF FREDERICTON.

" 58. The schools in the city of Saint John and in the city of Fredericton shall be managed as follows :—

(1.) The city of Saint John shall, for the purposes of this Act, be one entire district, and the city of Fredericton shall, for the purposes of this Act, be one entire district ; each of which districts shall be under the control and management, for school purposes, of a Board of Trustees, which shall be a corporate body in relation to all the powers and duties conferred upon it by virtue of this Act, and shall be styled The Board of School Trustees of Saint John (*or Fredericton, as the case may be*) ; the organization, rights, powers, duties and liabilities of each of which Boards shall be as herein defined :

" (2.) The Board of Trustees shall consist of seven members, of whom the Governor in Council shall appoint three, one of whom shall be designated as Chairman, and the Common or City Council, hereinafter designated as the Council, shall appoint four, to hold office during pleasure. A majority of the Board shall constitute a quorum, and in the absence of the Chairman, the Board shall temporarily appoint a Chairman :

(3.) The Trustees shall serve without reward, nor shall they be interested, directly or indirectly, otherwise than in their corporate capacity, in any contract authorized by this Act. They shall meet once at least each month, and may adjourn for a shorter time. Special meetings may be called by the Chairman, on personal notice given to the members of the Board, or in such other manner as the Board may prescribe :

(4.) The Board of Trustees shall appoint a Secretary, at a salary not exceeding eight hundred dollars per year. The Secretary shall keep a record of the proceedings of the Board, and perform such other duties as the Board may prescribe in relation to its corporate affairs. Such record, or a transcript thereof, certified by the Secretary, shall be received in all Courts as *prima facie* evidence of the proceedings, and such record and all books, accounts vouchers and papers of the Board shall at all times be subject to the inspection of the Superintendent of Education and any Committee of the Council.

" (5.) The Board of Trustees shall have power, and it shall be its duty, to provide sufficient school accommodation and tuition, free of charge, to all children in the district between five and twenty years of age, inclusive, and for such purpose organize and establish such and so many schools as it shall deem requisite, with power to alter and discontinue the same ; to purchase or lease lands or buildings for school purposes ; to erect, enlarge, alter, repair and improve school buildings and their appurtenances, according to the requirements of the case ; to furnish school-houses and procure furniture, maps, and apparatus, and to provide text books for indigent pupils ; to provide fuel and light, and defray the contingent expenses of the several schools and of the Board of Trustees ; to have the custody and safe keeping of the School property of the district, and to insure the school buildings and furniture ; to determine the sites of the school houses ; to contract with and pay the wages of teachers ; to have in all respects, and subject to the Board of Education and Superintendent, and to the various provisions of this Act, the superintendence, supervision and management of the schools of the district ; to notify the Council of the amounts required for the yearly support and maintenance of the schools as hereinafter provided ; to report annually to the Council upon the expenditure of the moneys received by the Board under the provisions of this Act ; to furnish semi-annually to the Superintendent of Education a full report of its proceedings under this Act ; also returns of all schools in accordance with the forms supplied by the Superintendent ; and a statement of the appropriation of all moneys received by the Board under the provisions of this Act ; and generally the Board of

Trustees shall exercise all the powers and be subject to all general duties of Trustees under this Act, so far as the same are not impaired or affected by the provisions of this Section relating to the management of schools in the cities of Saint John and Fredericton :

"(6.) The Board of Trustees shall have power to borrow money for the purchase of school lands or buildings, and for the erection of school buildings, and, when sanctioned, by the Council, for the permanent repair and furnishing of school buildings :

"(7.) To enable the Board to borrow money, it may issue debentures, to be called School Debentures, in such form and for such sums as may be decided upon, redeemable in twenty-five years from the date thereof, with interest not exceeding six per centum per annum, payable half-yearly, which debentures shall be a charge upon the district. The debentures shall be sealed with the seal of the Board, and signed by the Chairman and countersigned by the Secretary, provided that the whole amount of such debentures shall not exceed for the city of Saint John the sum of one hundred thousand dollars, and for the city of Fredericton the sum of forty thousand dollars :

"(8.) The proportion of the County School Fund apportioned to the said districts shall be paid to the respective Boards on the order of the Superintendent of Education ;

"(9.) Any sum required for the yearly support and maintenance of the schools, and for the due execution of the different powers and trusts vested in the Board by this Act, other than for the purposes mentioned in sub-section seven, including, amongst other things, the sums required for the payment of the teachers' salaries over and above the amount payable out of the Legislative Grant and County School Fund, the rental of lands and buildings, the care of school property, fuel, light, and insurance, the purchase of school books for indigent pupils, and of maps and apparatus, the interest payable on debentures issued by the Board, the contingent expenses of the Board including the salary of its Secretary, with all the other current expenses, and expenses of maintenance, shall be determined upon annually by the Board, which shall, previous to the order for assessment for general city purposes, notify the Council of the aggregate of such amounts, but such aggregate, exclusive of the interest payable on debentures, shall not, without the sanction of the Council, in any one year exceed twice the amount received by the district in the year then next preceding from the Provincial Treasury and County School Fund, or in the first year after the passing hereof, four times the amount received by the district in the year then next preceding from the Provincial Treasury :

"(10.) The Board shall at the same time notify the Council of the amount required for furnishing the school buildings, repairing, enlarging, altering or improving the school buildings and premises, and the Council shall determine whether the same, or any part thereof, shall be raised by debentures, to be issued by the Board as aforesaid, or by yearly assessment as herein next provided :

"(11.) The Council is hereby authorized and required on such notification, and on the request, under seal, of the Board of Trustees, to cause to be levied and collected at the time of levying and collecting other city taxes, a sum sufficient, after deducting costs of collection and probable loss, to yield such amount so determined upon by the Board, with such further amount as the Council shall sanction above the limit heretofore prescribed, or for the purposes hereinbefore in such section mentioned ; such amounts to be levied and collected from the district for which the same may be required, in manner following, that is to say :—A tax of one dollar shall be assessed and levied upon the poll of every male inhabitant of the district of the age of twenty-one years and upwards, and the balance of the sum so required shall be levied and collected in the same manner as other city taxes, and the sum so raised shall be paid by the City Chamberlain or Treasurer, as the case may be, on the order of the Board :

"(12.) The Board of Trustees is hereby authorized, with the sanction of the Council, to co-operate with the governing body of any School existent at the passage hereof, on such terms as to the Board shall seem right ; but any such arrangement shall be annual in its nature, and shall be determinable by effluxion of time, or on breach of conditions, and shall not include the building or furnishing of School-houses, and in such cases the

Board may make allowances to such Schools out of the funds under its control ; but no public funds shall be granted in support of any School unless the same be a free School, and conducted in every respect in conformity with this Act and the regulations of the Board of Education.

“(13.) The Council shall annually appoint two Auditors to audit the Accounts of the Board of Trustees, and the expenses of such audit shall be paid out of the contingent expenses of the Board.

“(14.) The title of all School property shall be vested in the Board of Trustees, and such property shall not be subject to taxation, or be liable to be taken in execution ; but in case of any judgment being recovered against the Board of Trustees, they shall forthwith notify the Council of the amount thereof, and the like steps shall be taken by the Council to levy and collect the same, as in other cases provided for by this Act.

“(15.) All the provisions of this Act, except as herein otherwise provided, shall extend to the City of Saint John and to the City of Fredericton.

INCORPORATED TOWNS, &C.

“59. The provisions of this Act relating to Schools in the Cities of Saint John and Fredericton may, as hereinafter provided, be extended to any Town now incorporated, or which may hereafter be incorporated, with the substitution of the words “Town Council” for “City Council,” “Treasurer or other fiscal officer” for “Chamberlain;” and the amount of Debentures shall not exceed the sum limited for the City of Fredericton, and such Debentures shall be payable in ten years after date thereof; Provided always, that the Town Council shall, at a meeting called for such purpose, determine in favor of the adoption of such provisions, and shall, under the corporate seal, certify the same to the Governor in Council, who shall appoint a proportion of the Trustees, as provided for the Cities of Saint John and Fredericton.

“60. That all Schools conducted under the provisions of this Act shall be non-sectarian.

REPEALING CLAUSE.

“61. An Act, 21st Victoria, Chapter 9, intituled, *An Act relating to Parish Schools* ; also, An Act, 26th Victoria, Chapter 7, intituled, *An Act in amendment of the Act 21st Victoria, Chapter 9, intituled, An Act relating to Parish Schools* ; also, Section 2 of an Act, 30th Victoria, Chapter 27, intituled, *An Act relating to Grammar, Superior and Common Schools* ; and all Acts or parts of Acts inconsistent herewith or repugnant hereto are hereby repealed.

OPERATION.

“62. This Act shall come into operation on the first day of January, in the year of our Lord one thousand eight hundred and seventy-two ; but the Board of Education and Superintendent, under the *Act relating to Parish Schools*, are hereby empowered to take such preliminary action as they may deem necessary in pursuance of section six, sub-sections three, four and five, and section seven; sub-sections four and five and sections fifty-eight and fifty-nine shall be operative so far on the passage hereof as to permit the appointment of the Boards of Trustees, and in incorporated Towns the adoption of the provisions relating to the Cities of Saint John and Fredericton, and the appointment of Boards of Trustees in such town as contemplated by such Sections, and such preliminary action by such Boards as may be necessary to secure School accommodation ; and if in any County the Sessions shall, previous to the said first day of January, order the assessment for general County purposes for the year eighteen hundred and seventy-two, the Clerk of the Peace of such County shall at such time proceed as provided by Section twelve of this Act to secure a County School Fund.

4. That an appeal by petition was thereupon made to His Excellency the Governor General, by the Roman Catholic Hierarchy, Clergy and Laity of the Province, against the last recited Act, and praying that His Excellency would be pleased to disallow the same

under the powers conferred by the British North America Act, 1867. The Petition, which was printed in numerous copies and signed by the Roman Catholics in different parts of the Province, is as follows :—

“ To His Excellency The Right Honorable Baron Lisgar, K. G. C. B., Governor General of Canada, &c., &c., &c. :

“ The petition of the undersigned Catholics of Memramcook, Dorchester, Westmoreland, in the Province of New Brunswick, humbly sheweth :—

“ That the Act relating to Common Schools, passed at the late Session of the Local Legislature of this Province, if allowed to go into operation, will destroy or greatly diminish the educational privileges which the Catholics of this Province enjoyed at the time of the passing of the British North America Act and subsequently.

“ That under the School Law in force in this Province at the time of the passing of the British North America Act, and up to the present time, Catholics were enabled, wherever their numbers were sufficiently large, to establish Schools in which a good religious and secular education was afforded.

“ That in the cities and other centres of large populations, for the wants of which the Law did not sufficiently provide, your Petitioners at a cost truly enormous, when compared to their means, erected large and commodious buildings in which they established and maintained Graded Schools, equal in all respects to any Primary Schools existing in these Provinces, and that they received legislative grants to aid in the maintenance of those schools. To these grants they may in most cases be fairly regarded as having a prescriptive right.

“ That in districts in which Catholics were too few in number to maintain Separate Schools they could not be compelled to contribute to the support of any schools in which they had reason to apprehend that any thing would be done to sap the faith or weaken the religious convictions of their children; and that this afforded them a safeguard and protection which the Act lately passed will wholly destroy.

“ That the School Act of last Session was not asked for or desired by the people of this Province, but was passed through an undue influence brought to bear upon the members of the Legislature; several members of the Assembly—who when elected were known to be opposed to this measure—having by the use of that influence been induced to violate their pledges and disregard the well understood wishes of their constituents.

“ That when the Bill was before the Legislature, the Catholics, who were more than one-third of the entire population of the Province, asked by petition that the right enjoyed by the Protestant minority in the Province of Quebec, to establish Dissentient or Separate Schools, should be accorded to them, and that this was refused.

“ That in the Legislative Council, an amendment giving the right to establish Separate Schools was only lost on equal division.

“ That the Act of last Session provides that there shall be a compulsory rating and assessment for the support of Schools in every County in the Province, in a fixed proportion to the number of inhabitants, and that no part of the money so raised, or of any money appropriated by the Provincial Government under this Act for educational purposes, shall be given to any school in which the education is religious.

“ That in the several School Districts into which the Counties are to be divided other sums are to be raised for School purposes, and the determination of the amount and of the mode of expenditure, the appointment of Trustees and all that concerns the management of the Schools, are vested absolutely in the majority, thus, by process of law, depriving your petitioners, who, in most instances, are in the minority, of all rights and all the protection of law.

“ That, if this Act be allowed to go into operation, your petitioners will be compelled to contribute to the support of a school system of which they conscientiously disapprove. And if they would not expose their children to what they regard as the most serious and alarming dangers, they must maintain other schools at their own expense—thus paying twice, while others pay but once; or when their numbers or

means will not enable them to establish and maintain schools to which they can with safety send their children, they will be compelled to allow them to grow up in ignorance.

“That this would be a most serious infringement upon the rights of your petitioners—a most serious deprivation of the educational privileges they have hitherto enjoyed—and a palpable violation of the spirit of the British North America Act.

“Your petitioners, therefore, humbly pray that your Excellency will be pleased to disallow the said Act.

“Signed by Rev. C. Lefebvre, S. S. C., and 537 others.”

To this petition answer was made as follows (a despatch to the same effect being also sent to the Government of New Brunswick):—

DEPARTMENT OF THE SECRETARY OF STATE,
“OTTAWA, 24th January, 1872.

“MY LORD [SIR],—

“I am directed to enclose to your Lordship [you] an extract from the report of the Minister of Justice on the numerous petitions from the Roman Catholics of New Brunswick, praying that the Act, chapter 21, of the last session of the Legislature of New Brunswick, intituled, “An Act relating to Common Schools,” be disallowed, and to inform your Lordship [you] that the conclusions of the said Report have been agreed to by His Excellency the Governor General in Council.

“I have, &c.,
(Signed,) “E. PARENT, U. S. S.

“To His Lordship the Bishop of Chatham, Chatham, N. B.

“To His Lordship Bishop Sweeny, St. John, N. B.

“The Reverend James Quinn, Catholic Pastor, St. Stephen, N. B.”

(Extract from the Report of the Minister of Justice, dated January 20th, 1872.)

“Numerous petitions to His Excellency the Governor General from the Roman Catholics of New Brunswick, most respectably signed, have been received, praying that the Act, chapter 21, intituled, ‘An Act relating to Common Schools,’ be disallowed.

“The grounds upon which this prayer is based are:—

“1. That the Act will destroy or greatly diminish the educational privileges which Catholics enjoyed at the time of the passing of the British North America Act, and subsequently.

“2. That the pecuniary grants hitherto made to the graded schools have been taken away, although to these grants Catholics may, in most cases, be fairly regarded as having a prescriptive right.

“Now the Provincial Legislatures have exclusive powers to make laws in relation to education, subject to the provisions of the 93rd clause of the British North America Act. Those provisions apply exclusively to the denominational, separate or dissentient schools; they do not in any way affect or lessen the power of such Provincial Legislatures to pass laws respecting the general educational system of the Province.

“The Act complained of, is an Act relating to Common Schools, and the Acts repealed by it apply to parish, grammar, superior and common schools. No reference is made in them to separate, dissentient or denominational schools, and the undersigned does not on examination find that any Statute of the Province exists establishing such special schools.

“It may be that the Act in question may operate unfavorably on the Catholics, or on other religious denominations, and if so, it is for such religious bodies to appeal to the Provincial Legislature, which has the sole power to grant redress.

"As, therefore, the Act applies to the whole school system of New Brunswick, and is not specially applicable to denominational schools, the Governor General has, in the opinion of the undersigned, no right to intervene.

"As to the second objection respecting pecuniary grants, these must, of course, be under the annual supervision of the Legislature which has the sole power to deal with the public funds; unless, by special enactment, those grants have been conferred for a specified period by an Act of the Legislature.

"In such case the grant might be considered in the nature of a contract, and the repeal might be held to be a breach of that contract.

"The undersigned does not find that any such statutory contract has been made. Under the circumstances, he is therefore of opinion that no other course is open to the Governor General than to allow the Act to go into operation.

"All which is respectfully submitted.

(Signed,)

JOHN A. MACDONALD."

The following correspondence also took place, which, together with all the communications on this subject, was laid before the Parliament of Canada at its last session:

(Copy.)

To His Excellency the Governor General.

"MY LORD,—On behalf of my Parishioners and myself I have the honor to transmit the enclosed memorial. I most respectfully submit you will find in the document itself intrinsic reasons sufficient to induce you in Council to refuse your sanction to a School Bill, against which the entire Catholics of New Brunswick and many others protest so generally and so loudly.

"It must appear strange to a statesman of such great experience and enlightened views as your Excellency, that whilst Great Britain and Canada, both the guides to wide legislation among the most enlightened inhabitants of Great Britain and British America, and whilst the greatest men those countries have produced—such as the present and last Premiers, Gladstone and Disraeli, the Bishop of Exeter, the Fellows of Trinity College, Dublin, and your own noble, brave, and wise fellow-countryman, the late Duke of Wellington—were and are for Separate Schools, to satisfy the consciences and religious convictions of the various denominations in their respective countries, the Local Legislature of New Brunswick would pass a law in opposition to the examples and precedents which they are accustomed to follow.

"But I will not pursue the matter any further. I will leave the case in your Excellency's hands, fully confident that it will secure from you that discussion which will best secure the peace and serve the best interests of New Brunswick.

"I have the honor to be,

"Your Excellency's obedient and humble servant,

"(Signed,)

JAMES QUIN,

"Catholic Pastor.

"The Right Hon. Lord Lisgar,
Governor General, &c. &c.

"P. S. Hon. Mr. Tilley, whom I met at his residence, St. Andrew's, told me the Governor in Council would take the signature of the pastor for those of his congregation.

"(Signed,)

JAMES QUIN.

"St. Stephen, N. B., June 1st, 1871."

To His Excellency the Governor General of the Dominion of Canada in Council.

"The memorial of the undersigned Catholic inhabitants of the Parish of St. Stephen, County of Charlotte, Province of New Brunswick;

" Humbly sheweth :—

" That the present School Bill just passed by the Legislature of New Brunswick had not been desired by the inhabitants of that Province.

" That two-fifths of the entire population have been opposed to its becoming law, as is manifest from the petitions numerously signed which have been presented against it.

" That the School Bill passed the House of Assembly by the votes of a few members who, if they acted according to the well-known wishes of their constituents, would have defeated it.

" That the Bill would miscarry in the Legislative Council where the votes were equal on the division, had it not been for the vote of a Government official who is a Railroad Commissioner.

" That the Bill is the more grievous and intolerable to the people of New Brunswick since it deprives them of important privileges long enjoyed—" Separate Schools," where useful education, founded upon religion, can be taught, and which their fellow subjects in Canada now possess.

" That, in the opinion of your memorialists, if the School Bill is put into operation, it will be a prolific source of contention and strife in a vast number of the Local School Districts, the result of which will be the closing of a great number of schools, and the disturbance of that peace which now happily prevails over the Province.

" Your memorialists, therefore, humbly pray that your Excellency in Council will exercise your prerogative, and refuse to give the sanction of law to so unfair and obnoxious a measure as this School Bill.

" And your memorialists, as in duty bound, shall ever pray, &c

" Signed on behalf of his parishioners,

" (Signed,)

JAMES QUIN,

" St. Stephen, June 1st, 1871."

" Catholic Pastor."

(Copy.)

The Governor General's Secretary to the Reverend J. Quin.

OTTAWA, June 6th, 1871.

" SIR,—I have the honor, by desire of the Governor General, to acknowledge the receipt of a memorial signed by yourself in behalf of the Catholic inhabitants of the Parish of St. Stephen, praying His Excellency to withhold his assent to a School Bill recently passed by the Legislature of New Brunswick.

" In reply I am to inform you that the petition has been duly forwarded to the proper officer, in order that it may be submitted for the consideration of the Privy Council, by whose advice The Royal Instructions bind the Governor General to guide his proceedings in all matters of local concernment.

I have, &c.,

" (Signed,)

JOHN KIDD,

" *For the Governor's Secretary.*"

" The Reverend J. Quin,

" St. Stephen, N. B."

5. That the following are copies of the various Acts passed by the Legislature of the Province of New Brunswick, on the subject of the School Law of that Province, shewing the law as it existed at the time of the passing of the Act to which objection is taken, and which were repealed thereby :—

21st VIC., CAP. IX, 1858.

An Act relating to Parish Schools.

[*Passed 6th April, 1858.*]

" Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows :—

" 1. The Governor in Council may appoint a Chief Superintendent of Schools, who shall perform the duties of Secretary to the Board, and fix his salary not exceeding three hundred pounds per year, besides travelling charges and contingencies of office, and a Clerk or assistant, whose salary shall not exceed one hundred and fifty pounds per year.

" 2. The Governor and Council, with the Superintendent of Schools, shall constitute a Provincial Board of Education. The Governor, with three other members and the Superintendent, shall be a quorum.

" 3. The Governor in Council shall from time to time divide the Province into four Districts, and appoint an Inspector of Schools for each District, and fix his salary not exceeding two hundred and fifty pounds per year, including travelling expenses.

BOARD OF EDUCATION.

" 4. The Board of Education shall have power to establish a Training School, or continue any one now in operation, and a Model School connected therewith, appoint a Teacher of such Training School, and a Male and Female Teacher of the Model School.

" To make rules and regulations for the government of such Training School ; to prescribe the terms on which Students shall be received and instructed therein ; and to make such allowance for the expense of Teachers attending the School as shall be deemed necessary, not exceeding six pounds to any Teacher.

" To make regulations for the organization, government, and discipline of Parish Schools, and the examination, classification, and mode of licensing Teachers, and the mode of certifying the time taught and of paying them.

" To appoint examiners of Teachers, and to grant and cancel Licenses.

" To hear and determine all appeals from the decision of Trustees.

" To prescribe the duties of Inspectors of Schools.

" To apportion all moneys granted by the Legislature for the support of such Schools among the several Parishes, in proportion to the number and classes of Schools reported to have been efficiently conducted for the preceding year, not exceeding an average of two hundred and fifty pounds to each Parish in any one County, nor three hundred and twenty-five pounds to any one Parish therein.

" To provide for the establishment, regulation, and government of School Libraries, and the selection of Books to be used therein ; but no works of a licentious, vicious, or immoral tendency, or hostile to the christian religion, or works on controversial theology, shall be admitted.

" To make regulations for the construction and ventilation of School Houses, and the furniture and apparatus to be provided and used therein.

" To make such other regulations as may be deemed necessary to carry into effect this Act.

" To apply all balances of money arising from the sale of books, maps, and apparatus furnished for the use of Parish Schools, in procuring other books, maps, and apparatus therefor, and to appoint persons in each County to sell the same under their direction.

" To divide the City of St. John into two Parishes for the purposes of this Act.

SUPERINTENDENT.

" 5. The Superintendent shall have a general supervision and direction of the Inspectors, the Training and Model Schools, and the Parish Schools, subject to the order of the Board of Education.

" He shall enforce and give effect to all the regulations made by the Board.

" He shall collect information on Education, and hold public meetings in different parts of the Province, to which he shall invite the attendance of the Inspector, Teachers,

and inhabitants, and address such meetings on the subject of Education, using all legitimate means to excite an interest therein.

“He shall cause copies of this Act, with the Regulations of the Board of Education, together with all necessary forms and instructions, to be printed and furnished to the Inspectors, Trustees, School Committees, and Teachers.

“He shall adopt the necessary measures to promote the establishment of School Libraries.

“He shall provide the necessary plans for the construction of School Houses, and recommend the proper furniture and appendages for the same, and the improvement and embellishment of the grounds on which they are situate.

“He shall have power to sue for books, maps and apparatus purchased for the use of Parish Schools, and for all moneys due on the sale thereof; and every such action shall be brought and prosecuted by him in his name of office, and shall not abate by reason of any vacancy or change of officer.

“He shall annually prepare a Report upon the condition of the Schools and School Libraries, with such other information upon the system and state of Education generally, and the amount expended in promoting it, with such suggestions as he may deem necessary, accompanied with a return of the moneys received from the sale of books and apparatus, which shall be laid before the Legislature within ten days after the opening thereof.

TRUSTEES.

“6 Three Trustees of Schools shall be annually elected in each Town and Parish, at the time and in the same manner as other Town or Parish officers, who shall be subject to the same pains and penalties for neglect or refusal to act, or the non-performance of their duties as other Town and Parish officers; and when any Town or Parish fails to elect, the Sessions shall appoint as in other cases: in incorporated Towns, Cities or Counties, the Council shall appoint the Trustees; but the Trustees in office at the time of the passing of this Act shall continue to act until others are appointed in their stead.

“It shall be the duty of Trustees to divide their respective Parishes into convenient School Districts, and from time to time to reconstruct them, and to define in writing the boundaries of each District, and file a description thereof with the Clerk of the Peace, and in incorporated Counties with the Secretary-Treasurer, and a copy thereof with the Town Clerk.

“They shall give any licensed Teacher authority in writing to open a School in a District where the inhabitants have provided a sufficient School House, secured the necessary salary, and with their assent agree with such Teacher.

“They may suspend or displace any Teacher for incapacity, or any improper or immoral conduct, and shall forthwith transmit a copy of their proceedings to the Superintendent for the decision of the Board.

“They shall immediately after ratifying the engagement of a Teacher, and annually thereafter, call a meeting of the ratepayers of the District for the purpose of electing a School Committee, to consist of three persons, giving seven days' notice, to be posted on the School House, specifying the time, place and object of such meeting.

“The Trustees, when convenient, shall accompany the Inspector in the examination and inspection of the Schools in their respective Parishes.

“They shall at least once a year examine all the Schools in their respective Parishes, pursuing as near as may be the mode of examination adopted by the Inspector.

“In any Town, Village or populous District, the Trustees may authorize such number of Schools as the wants of the population may require; and when they deem it necessary, authorize the employment of an assistant licenced Teacher in any large School.

“Whenever a convenient District can be laid off so as to include a portion of two Parishes, the Trustees of the two Parishes may lay off such District with the consent of a majority of the inhabitants thereof.

"The Trustees shall apportion among the School Districts in their respective Parishes' any moneys raised by County or Parish assessment for the support and maintenance of the Schools therein, in such a manner as they shall deem just and equitable.

"Any Parish or District adopting the principal of assessment, and the sum required for the Teacher being assessed and paid, shall for every year such assessment is so made and paid, receive from the Province Treasurer ten per cent. over the allowance to Schools of the same class in Parishes or Districts not so assessed, to be apportioned and paid the Teachers therein.

COMMITTEE.

"7. The inhabitants of the School District being ratepayers, shall at the meeting called by the Trustees as aforesaid, elect by a majority of votes three persons, who shall constitute a School Committee for that District, and shall continue in office for one year, or until others are elected in their stead.

"The School Committee shall have the immediate charge of the School House, with the furniture, apparatus and grounds.

"They shall, when necessary, call meetings of the inhabitants of the District for the purpose of providing a School house, books, maps, apparatus, School furniture and fuel, and for the support of the School and the comfort of the scholars.

"They shall have the immediate control of any Library provided by the District, and may appoint a Librarian, Secretary and Treasurer.

"They shall receive and appropriate any money raised in the District for the purpose of providing a Library or increasing the same.

"The School Committee may admit so many free scholars and also children at reduced rates, being the children of poor and indigent parents, as they may deem prudent and just ; and they may apply the amount so received to the support of the School.

DUTIES AND QUALIFICATIONS OF TEACHERS.

"8. The Teachers, male and female, shall be divided into three classes, qualified as follows :—

"Male Teachers of the first class to teach spelling, reading, writing, arithmetic, English grammar, geography, history, book-keeping, geometry, mensuration, land-surveying, navigation and algebra ;—of the second class, spelling, reading, writing, arithmetic, English grammar, geography, history and book-keeping ;—of the third class, spelling, reading, writing and arithmetic.

"Every Teacher of the first and second class shall be qualified and enjoined to impart to his pupils a knowledge of the geography, history, and resources of the Province of New Brunswick, and of the adjoining North American Colonies.

"Female Teachers of the first class to teach spelling, reading, writing and arithmetic, English grammar, geography, history, and common needle work ;—of the second class, spelling, reading, writing, arithmetic, English grammar, geography and common needle work ;—of the third class, spelling, reading, writing, arithmetic, and common needle work.

"Every Teacher shall keep a daily register of the scholars, which shall be open for inspection at all times ; a Visitor's book, and enter therein the visits of the Inspectors, Trustees, and School Committee respectively, maintain proper order and discipline, and carry out the regulations made for his guidance.

"Every Teacher shall take diligent care, and exert his best endeavours to impress on the minds of the children committed to his care, the principles of christianity, morality and justice, and a sacred regard to truth and honesty, love of their country, loyalty, humanity and universal benevolence, sobriety, industry, and frugality, chastity, moderation and temperance, order and cleanliness, and all other virtues which are the ornaments of human society ; but no pupil shall be required to read or study in or from any religious book, or join in any act of devotion objected to by his parents or guardians ; and the Board of Education shall, by regulation, secure to all children whose parents or guardians

do not object to it, the reading of the Bible in Parish Schools—and the Bible, when read in Parish Schools by Roman Catholic children shall, if required by their parents or guardians, be the Douay version, without note or comment.

“The Teachers shall be entitled to receive from the Treasurer according to the following rates:—Male teachers of the first class, thirty seven pounds ten shillings; of the second class, thirty pounds; of the third class, twenty-two pounds ten shillings; Female Teachers of the first class, twenty-seven pounds ten shillings; of the second class twenty-two pounds ten shillings; of the third class, seventeen pounds ten shillings.

“No Teacher shall be paid for a less period than six months without the sanction of the Board, nor in any case unless the inhabitants shall have raised by assessment, or paid for his support, an amount equal to the Provincial allowance, or shall have furnished him with board, washing, and suitable accommodation during his engagement.

SUPERIOR SCHOOLS.

“9. When the inhabitants of any School District shall raise by assessment or otherwise for the support of a Superior School, the sum of fifty pounds or upwards, and shall have engaged, with the consent of the Trustees, a competent Teacher, they shall receive from the Province a sum equal to the amount so raised, not exceeding the rate of seventy-five pounds per annum, to be paid to the Teacher upon the Certificate of the Inspector that the School has been taught to his satisfaction, and the payment made to the said Teacher at the rate of fifty pounds per annum by the inhabitants, but not more than one such School shall be allowed in one Parish.

LIBRARIES.

“10. Whenever any School District shall raise a sum of money for the purpose of establishing a Library, or increasing any one already established, they shall be entitled to receive from the Province Treasury a sum equal to half the amount so raised, to be expended in the purchase of Books therefor, not to exceed five pounds in any one year.

ASSESSMENT.

“11. Whenever any County, Parish, District, or Municipality, determines to provide for the support of the Schools therein by assessment, such assessment shall be levied and collected in the same manner in all respects as other County or Parish rates.

“12. If the Council of any Municipality determines to support their Schools by assessment, they shall have power to make such by-laws as they shall deem necessary to levy and collect such assessment.

“13. Every County or Municipality adopting the assessment principle, shall receive a sum equal to the amount so raised, if it shall not exceed the average of two hundred and fifty pounds to each Parish, but the whole shall be expended in the payment of salaries of Teachers.

“14. A public meeting of the rateable inhabitants of any Parish or District may be called by the Trustees on the written application of twenty or more resident freeholders or householders in any Parish, or three or more resident freeholders or householders in any School District, by notice advertised at least fifteen days in a Newspaper published in the Parish or District, if, any, and in five or more of the most public places of the Parish, or two of the District, for the purpose of determining upon the propriety of raising the necessary amount of money required for School purposes by assessment; at which meeting the senior Trustee present, or in case of his absence such person as the majority of the rate-payers present may appoint, shall preside; and it shall be the duty of the Chairman to take the sense of the meeting upon the question of assessment, if it is decided in the affirmative, then on the amount to be raised, and the object.

“15. If a majority of the rate-payers, present agree to raise a sum by assessment either for the support of the Teacher, the purchase of land whereon to erect a School House or other buildings for School purposes, the purchase or maintenance of a library,

"To _____ Assessors of the Parish of _____
 "You are required to levy and assess the sum of _____ in and upon the
 Parish of _____ being the amount voted at a Parish Meeting for the purpose of
[here specify the object] and cause the same to be collected according to Law, and paid to
 _____ the Trustees of Schools for the said Parish.

“ If the Assessment be made upon a District of the Parish, the following shall be the Form :—

" To _____ Assessors of the Parish of _____
 " You are required to levy and assess the sum of _____ pounds in and upon
 School District number _____, in the Parish of _____, being the amount voted
 at a meeting of the said District for the purpose [*here specify the object*] and cause the
 same to be collected according to Law, and paid to _____, the School Com-
 mittee for the said District.

“ 16. The Assessors shall, without delay, make out the assessment list as near as may be in the form prescribed for County or Parish rates, and deliver the list to the Collector of rates, with a precept endorsed thereon in the form prescribed for County or Parish rates ; if the Parish have been divided into several Districts, with a District Collector for each, they shall furnish each Collector with a separate list, for the purpose of assessing the whole Parish ; but if only a School District be assessed, they shall deliver the list to the nearest Collector, and in every case file a duplicate thereof with the Clerk of the Peace ; and such proceedings shall be had and taken thereon for the levying and collecting the same, as are provided in other cases of County or Parish rates ; and the money, when collected, shall be paid over to the Trustees, if the assessment be made for the whole Parish, and to the School Committee, if for a School District, to be appropriated for the purpose previously determined by the ratepayers.

“ 17. The Assessors and Collectors shall perform their duties under the same pains and penalties as in all other cases, and receive the same fees and allowances.

“ 18. Whenever a written application shall be made to the Clerk of the Peace of any County not incorporated one month before the time of holding the annual election for the Town and Parish officers, signed by at least fifty freeholders or householders of the said County, requesting him to ascertain whether the ratepayers will adopt the principle of assessment for the support of Schools, he shall notify the Town Clerk of each Town or Parish thereof, whose duty it shall be to give notice, with the notice of the annual election of Town or Parish officers, that the question will be put to the vote of the ratepayers at such annual meeting, and the Chairman shall put that question to the meeting, and take the vote of those voting in the affirmative and negative, and certify the number so voting to the Clerk of the Peace, with the list of Town or Parish officers elected, and the Clerk of the Peace shall lay the return before the Sessions at their next meeting.

" 19. If a majority of the whole voting at such meeting have voted in the affirmative, the Sessions shall determine the amount to be raised upon the County for School purposes, and cause the same to be levied, assessed, and collected as other County rates, and paid into the County Treasury.

" 20. The Sessions shall apportion the money raised by assessment among the respective Parishes in such manner as they shall deem equitable, having regard to their population and requirements.

" 21. The money so apportioned shall be paid to the County Treasurer to the credit of the respective Parishes.

" 22. When a County shall adopt the principle of assessment, any Parish or District therein having been previously assessed for the same year shall not be liable to such County assessment, nor be entitled to receive any part thereof; and when a Parish shall adopt such principle, no District in such Parish having been previously assessed shall be liable for such Parish assessment, or entitled to receive any part thereof; but such exemption shall not extend beyond the first year in which such County or Parish assessment shall be levied.

" 23. The assessment principle, when adopted, shall continue until reversed in the same manner as provided for its adoption.

" 24. Any District School supported by assessment shall be free to all the children residing therein.

" 25. A copy of the memorandum mentioned in Section 6, and of any plan therein referred to, if any, certified by the Clerk of the Peace with whom filed, shall be evidence of the laying off of such District by the Trustees and the bounds thereof.

" 26. The salary of the Teacher of the Training School shall not exceed two hundred and fifty pounds per annum; the salary of the male Teacher of the Model School shall not exceed one hundred and twenty-five pounds per annum; and the salary of the female Teacher shall not exceed seventy-five pounds.

" 27. The Governor in Council shall issue warrants on the Province Treasury for the payment of the several allowances and salaries provided in this Act.

" 28. Any Trustee or member of the School Committee, who shall not expend the moneys received by him under any of the provisions of this Act, or who shall misapply the same, shall pay a sum not exceeding twenty pounds for each offence, which, when recovered, shall be applied for the benefit of the Schools of the Parish or District.

" 29. Any Trustee who shall knowingly sign a false report; any Teacher who shall keep a false register, or make a false entry or returns; or any Inspector who shall make a false report, shall for each offence pay ten pounds; when recovered, it shall be paid to the Trustees of Schools for the Parish, to be applied by them for the benefit of Parish Schools.

" 30. Lands for sites of School-houses or other School purposes may be conveyed to and held by the Sessions; and in incorporated Towns, Cities, or Counties, by the Municipality,

" 31. Rate-payers in this Act shall mean rate-payers upon real or personal property or income.

" 32. An Act made and passed in the twenty-first year of the reign of her present Majesty, Queen Victoria, intituled, "*An Act to revive and continue Chapters 48, 49, 50, and 51, Title vii., of the Revised Statutes 'Of Parish Schools,' and the Act in amendment thereof,*" be and the same are hereby repealed.

" 33. This Act shall not come into operation or be in force until the fifteenth day of April in the present year of our Lord one thousand eight hundred and fifty-eight."

26TH VIC., CAP. VII., 1863.

An Act in amendment of the Act 21st Victoria, Chapter 9, intituled, *An Act relating Parish Schools.*

[Passed, 20th April, 1863.]

" Be it enacted, by the Lieutenant Governor, Legislative Council, and Assembly, as follows :—

"1. Whenever it shall be made to appear to the Board of Education, either by the report of the District Inspector or otherwise, that any Parish has been improperly divided into School Districts, the Board may cancel such division; and it shall then be the duty of the Chief Superintendent to direct the Trustees of Schools for such Parish to make a new division thereof, and, if deemed necessary, he may instruct the District Inspector to assist them. On receipt of such instructions, it shall be the duty of the Trustees, as provided by the sixth section of "An Act relating to Parish Schools," forthwith to re-divide such Parish into School Districts, and to file a description of such division with the Clerk of the Peace, or in incorporated Counties with the Secretary-Treasurer of the County, and also to transmit a copy thereof to the Chief Superintendent of Schools, to be filed in his office.

"2. The Board of Education may limit the number of Schools to be kept in any town, village, or populous district in which the Trustees are by the said sixth section of the said Act empowered to authorize such number of Schools as the wants of the population may require, and make such regulations as may be deemed necessary as to the number of male and female Teachers respectively to be employed therein; and it shall not be lawful for the Trustees to exceed such limit or to depart from such regulations, or to establish a second School in any other School District, without the authority of the Board. Every such town, village, or populous district, shall be considered but one School District; but the rate-payers, at any meeting held under the authority of the seventh section of the said Act, may elect one or more Committees for the whole District, or a Committee for each School, as may be decided by a majority of the electors present."

30TH VIC., CAP. XXVII., 1867.

An Act relating to Grammar, Superior, and Common Schools.

[*Passed, 17th June, 1867.*]

"Be it enacted, by the Governor, Legislative Council, and Assembly, as follows:—

"1. Whenever the Trustees of any Grammar School shall make it appear to the Provincial Board of Education that one Teacher is insufficient for the number of scholars attending such School, the Board may authorize the Trustees to employ one or more Assistant Teachers; and the Teachers so employed, if duly qualified, shall be entitled to receive the same Provincial allowance as if they were employed in a Parish School.

"2. The Board of Education may also authorize the Trustees of Schools for any Parish to employ more than one Assistant Teacher in any School where the number of scholars attending such School shall render it necessary."

6. That the question remained in this position until the meeting of the Parliament of Canada, in April, 1872. On the 20th of May, the subject was brought before the House of Commons, and the following proceedings ensued:—

"Mr. Costigan moved, that an Address be voted to His Excellency, representing:—That it is essential to the peace and prosperity of the Dominion of Canada that the several religions therein prevailing should be followed in perfect harmony by those professing them in accord with each other, and that every law passed either by this Parliament or by the Local Legislature, disregarding the rights and usages tolerated by one of such religions is of a nature to destroy that harmony. That the Local Legislature of New Brunswick, in its last Session, in 1871, adopted a law respecting Common Schools, forbidding the imparting of any religious education to pupils, and that that prohibition is opposed to the sentiments of the entire population of the Dominion in general, and to the religious convictions of the Roman Catholic population in particular. That the Roman Catholics of New Brunswick cannot, without acting unconscientiously, send

their children to Schools established under the law in question, and are yet compelled, like the remainder of the population, to pay taxes to be devoted to the maintenance of those Schools. That the said law is unjust, and causes much uneasiness among the Roman Catholic population in general disseminated throughout the whole Dominion of Canada, and that such a state of affairs may prove the cause of disastrous results to all the Confederated Provinces. And praying His Excellency, in consequence, at the earliest possible period, to disallow the said New Brunswick School law.

"And a Debate arising thereon, and the House having continued to sit until 12 of the clock, midnight ;

"TUESDAY, 21st May, 1872.

"And the Debate continuing, the said Debate was, on motion of Hon. Mr. Gray, adjourned until Wednesday next, to be then the first Order of the Day.

"WEDNESDAY, MAY 22nd, 1872.

"The House resumed the adjourned debate on Mr. Costigan's motion for an Address to His Excellency, representing :—That it is essential to the peace and prosperity of the Dominion of Canada that the several religions therein prevailing should be followed in perfect harmony by those professing them in accord with each other, and that every law passed either by this Parliament or by the Local Legislature disregarding the rights and usages tolerated by one of such religions is of a nature to destroy that harmony. That the Local Legislature of New Brunswick, in its last Session, in 1871, adopted a law respecting Common Schools, forbidding the imparting of any religious education to pupils, and that that prohibition is opposed to the sentiments of the entire population of the Dominion in general, and to the religious convictions of the Roman Catholic population in particular. That the Roman Catholics of New Brunswick cannot, without acting unconscientiously, send their children to schools established under the law in question, and are yet compelled, like the remainder of the population, to pay taxes to be devoted to the maintenance of those schools. That the said law is unjust, and causes much uneasiness among the Roman Catholic population in general disseminated throughout the whole Dominion of Canada, and that such a state of affairs may prove the cause of disastrous results to all the Confederated Provinces. And praying His Excellency, in consequence, at the earliest possible period, to disallow the said New Brunswick School Law.

"And the Debate having continued until six o'clock, p.m., Mr. Speaker left the Chair, to resume the same at 7.30, p.m.

"HALF-PAST SEVEN O'CLOCK, P.M.

"The House then resumed the Debate on Mr. Costigan's motion for an Address to His Excellency, (as above set forth).

"Hon. Mr. Gray moved in amendment, to leave out all the words after "Canada," in line 2, and to substitute the following :—That the constitutional rights of the several Provinces should be in no way impaired by the order of this Parliament—that the Law passed by the Local Legislature of New Brunswick respecting Common Schools was strictly within the limits of its constitutional powers—and is amenable to be repealed or altered by the Local Legislature, should it prove injurious or unsatisfactory in its operation ; that not having yet been in force six months, and no injurious consequences to the Dominion having been shown to result therefrom, this House does not deem it proper to interfere with the advice that may be rendered to His Excellency the Governor General by the respective Ministers of the Crown respecting the New Brunswick School Law."

"Hon. Mr. Chauveau moved in amendment to the said proposed amendment, That all the words after "that" in the original motion be expunged, and the following inserted in lieu thereof :—an humble Address be presented to Her Majesty, praying that she will be pleased to cause an Act to be passed amending "The British North America Act,

1867," in the sense which this House believes to have been intended at the time of the passage of the said Act, by providing that every religious denomination in the Provinces of New Brunswick and Nova Scotia shall continue to possess all such rights, advantages and privileges, with regard to their schools, as such denomination enjoyed in such Province at the time of the passage of the said last mentioned Act; to the same extent as if such rights, advantages and privileges had been duly established by Law."

"And a Debate arising thereon,—the said Debate was, on motion of Hon. Mr. Smith (Westmoreland), adjourned until Wednesday next, to be then the first Order of the Day.

"WEDNESDAY, 29TH MAY, 1872.

"The House resumed the adjourned Debate on Mr. Costigan's motion for an Address to His Excellency, representing :—That it is essential to the peace and prosperity of the Dominion of Canada that the several religions therein prevailing should be followed in perfect harmony by those professing them in accord with each other, and that every law passed either by this Parliament or by the Local Legislature, disregarding the rights and usages tolerated by one of such religions is of a nature to destroy that harmony. That the Local Legislature of New Brunswick, in its last Session, in 1871, adopted a law respecting Common Schools, forbidding the imparting of any religious education to pupils, and that that prohibition is opposed to the sentiments of the entire population of the Dominion in general, and to the religious convictions of the Roman Catholic population in particular. That the Roman Catholics of New Brunswick cannot, without acting unconscientiously, send their children to schools established under the law in question, and are yet compelled, like the remainder of the population, to pay taxes to be devoted to the maintenance of those schools. That the said law is unjust, and causes much uneasiness among the Roman Catholic population in general disseminated throughout the whole Dominion of Canada, and that such a state of affairs may prove the cause of disastrous results to all the Confederated Provinces. And praying His Excellency, in consequence, at the earliest possible period, to disallow the said New Brunswick School Law;" and of Hon. Mr. Gray's proposed motion in amendment thereto, and which motion was to leave out all the words after "Canada" in line 2, and to substitute the following :— "That the constitutional rights of the several Provinces should be in no way impaired by the action of this Parliament—that the Law passed by the Local Legislature of New Brunswick respecting Common Schools was strictly within the limits of its constitutional powers—and is amenable to be repealed or altered by the Local Legislature, should it prove injurious or unsatisfactory in its operation; that not having yet been in force six months, and no injurious consequences to the Dominion having been shown to result therefrom, this House does not deem it proper to interfere with the advice that may be tendered to His Excellency the Governor General by the responsible Ministers of the Crown, respecting the New Brunswick School Law;"—and of Hon. Mr. Chauveau's amendment to the said proposed amendment, That all the words after "that" in the original motion be expunged, and the following inserted in lieu thereof:—an humble Address be presented to Her Majesty, praying that she will be pleased to cause an Act to be passed amending "The British North America Act, 1867," in the sense which this House believes to have been intended at the time of the passage of the said Act, by providing that every religious denomination in the Provinces of New Brunswick and Nova Scotia shall continue to possess all such rights, advantages and privileges, with regard to their schools, as such denomination enjoyed in such Province at the time of the passage of the said last mentioned Act; to the same extent as if such rights, advantages and privileges had been then duly established by Law."

"And the Debate having continued until six o'clock, p.m., Mr. Speaker left the Chair, to resume the same at 7.30, p.m."

“HALF-PAST SEVEN O’CLOCK, P. M.

“The House then resumed the adjourned Debate on Mr. Costigan’s motion, for an Address to His Excellency on the subject of the New Brunswick School Laws ;—and of Hon. Mr. Gray’s proposed amendment thereto ;—and of Hon. Mr. Chauveau’s amendment to the said proposed amendment (as above set forth):—

“And the question being put on Hon. Mr. Chauveau’s amendment in amendment, it was negatived :—Yeas 34, Nays 126.

“The question being then put on the Hon. Mr. Gray’s proposed amendment,

“Mr. Colby moved in amendment thereto, that all after the word “that” be expunged, and the following substituted in lieu thereof :—“this House regrets, that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that Province, and hopes that it may be so modified during the next Session of the Legislature of New Brunswick, as to remove any just grounds of discontent that now exist ;” which was agreed to on the following division :—Yeas 117, Nays 42.

“Hon. Mr. Dorion then moved that the following words be added to Mr. Colby’s motion viz :—“And this House further regrets that to allay such well grounded discontent, His Excellency the Governor General has not been advised to disallow the School Act of 1871, passed by the Legislature of New Brunswick ;” which was negatived on the following division :—Yeas 38, Nays 117.

“And the House have continued to sit until 12 of the Clock, midnight.

THURSDAY, 30TH MAY, 1872.

“And the question being put on the main motion, as amended,

Hon. Mr. Mackenzie moved, that the following words be added thereto :—

“And that this House deems it expedient, that the opinion of the Law Officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council should be obtained as to the right of the New Brunswick Legislature to make such changes in the School Law as deprived the Roman Catholics of the privileges they enjoyed at the time of the Union, in respect of religious education in the Common Schools, with the view of ascertaining whether the case comes within the terms of the 4th subsection of the 93rd Clause of the British North America Act, 1867, which authorizes the Parliament of Canada, to enact remedial Laws for the due execution of the provisions respecting education in the said Act ;” which was agreed to ;

“The question being then put on the main motion, as amended, it was agreed to on a division, and is as follows :—

“That this House regrets that the School Act recently passed in New Brunswick, is unsatisfactory to a portion of the inhabitants of that Province, and hopes that it may be so modified during the next Session of the Legislature of New Brunswick as to remove any just grounds of discontent that now exist, and this House deems it expedient that the opinion of the Law Officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council, should be obtained as to the right of the New Brunswick Legislature to make such changes in the School Law, as deprived the Roman Catholics of the privileges they enjoyed at the time of the Union in respect of religious education in the Common Schools, with the view of ascertaining whether the case comes within the terms of the 4th sub-section of the 93rd clause of the British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial Laws for the due execution of the provisions respecting education in the said Act ;” the House divided, and it was resolved in the affirmative.

In accordance, therefore, with the Resolution of the House of Commons, the undersigned has the honor to recommend that His Excellency the Governor General be requested to transmit the Statement herein made to Her Majesty’s Secretary of State for the Colonies, in order that the opinion of the Law Officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council, may be obtained as to the right of the New Brunswick Legislature to make such changes in the School

Law as deprived Roman Catholics of the privileges they enjoyed at the time of the Union in respect of religious education in the Common Schools, with the view of ascertaining whether the case comes within the terms of the 4th sub-section of the 93rd clause of The British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act.

All which is respectfully submitted.

(Signed,)

JOHN A. MACDONALD.

No. 91.

GOVERNMENT HOUSE,

NEW BRUNSWICK,

13th November, 1872.

SIR,—I have the honor to acknowledge the receipt of your despatch (N. B. 139) enclosing for the consideration of my Government, a Minute of the

9th November 1872. Governor General in Council, together with a printed copy of the Report therein referred to, of the Honorable the Minister of Justice, respecting the School Act passed in 1871, by the Legislature of the Province of New Brunswick, and requesting me to communicate to you any remarks I may be advised to make in connection with the Minute, to be transmitted to the Right Honorable the Secretary of State for the Colonies.

I have the honor to inform you that I shall, this day submit the papers for the consideration of my Government, and hope very soon to be able to transmit a Minute of Council thereon.

I have, &c.,

(Signed,)

L. A. WILMOT,

Lieut. Governor.

The Honorable,

The Secretary of State for the Provinces, Ottawa.

No. 97.

GOVERNMENT HOUSE,

NEW BRUNSWICK,

31st December, 1872.

SIR,—I have the honor of sending with this despatch a Copy of the Minute of my Executive Council on the case submitted by the Dominion Government for the consideration of the Crown Officers in England, on the New Brunswick School Act of 1871, and to request that the same may be laid before His Excellency the Governor General, to be transmitted to the Right Honorable the Secretary of State for the Colonies, to be submitted to the Crown Officers.

I have, &c.,

(Signed,)

L. A. WILMOT,

Lieut. Governor.

The Honorable,

The Secretary of State for the Provinces, Ottawa.

PROVINCE OF NEW BRUNSWICK.

Copy of a Memorandum of the Executive Council in Committee, approved of by the Lieutenant Governor on the 23rd day of December, A. D., 1872.

The Executive Council having had under consideration a Copy of a Minute of the Privy Council of Canada, submitting for such remarks as may be thought proper to be

made thereon, a statement in reference to the School Law of New Brunswick, made by the Honorable the Minister of Justice, for transmission to the Right Honorable the Secretary of State for the Colonies, in pursuance of a resolution of the House of Commons, of the 30th May last, have the honor to make the following observations :—

The statement sets out—

1. The Resolution of the House of Commons of 30th May last, on the above subject, which is as follows :—“ That this House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that Province, and hopes that it may be so modified during the next session of the Legislature of New Brunswick, as to remove any just grounds of discontent that now exists ; and this House deems it expedient that the opinion of the Law Officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council, should be obtained as to the rights of the New Brunswick Legislature to make such changes in the School Law as deprived the Roman Catholics of the privileges they enjoyed at the time of the Union in respect of religious education in the Common Schools, with the idea of ascertaining whether the case comes within the terms of the 4th subsection of the 93rd clause of the British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act.”

2. Section 93 of the British North America Act, 1867.

3. The Common Schools Act, 1871.

4. Petitions and correspondence from the Roman Catholic clergy, praying His Excellency the Governor General to disallow the last mentioned Act ; together with an extract from the Report of the Minister of Justice, dated January 20th, 1872, recommending that said Act be allowed to go into operation.

5. The various Acts passed by the Legislature of New Brunswick on the subject of the School Law of the Province, shewing the law as it existed at the time of the passing of the Common Schools Act 1871, and which were repealed thereby, viz:—An Act relating to Parish Schools, 21st Vic. c. 9 ; An Act in amendment of an Act relating to Parish Schools, 26th Vic. c. 7 ; and an Act relating to Grammar, Superior and Common Schools, 30th Vic. c. 27.

6. The proceedings of the House of Commons, from the 20th to the 30th May last, in reference to the foregoing subject.

Two questions appear to be raised by the resolution of the House of Commons : the one relating to the powers of the New Brunswick Legislature ; the other relating to the powers of the Parliament of Canada.

Before considering such questions, it may be remarked that in the resolution it is assumed as a fact that the New Brunswick Legislature, by the passage of the Common Schools Act, 1871, made such changes in the Law as deprived the Roman Catholics of the privileges they enjoyed at the time of the Union, in respect of religious education in the Common Schools. This assumption the Executive Council can not for a moment admit. No privileges are taken away by the Common Schools Act, 1871, except such as were secured by the Statutes thereby repealed ; and the Executive Council regret that the House of Commons should have assumed a state of facts which should dispense with the necessity of examining the legislation of the Province upon the subject.

The first question relates to the right of the New Brunswick Legislature to make such changes in the School Law as were in fact effected by the passage of the Common Schools Act 1871, and involves the constitutional powers of the Legislature.

Upon this point, the Executive Council fully concur in the following opinion of the Minister of Justice, contained in his Report before alluded to :—

“ The Provincial Legislatures have exclusive power to make laws in relation to Education, subject to the provisions of the 93rd clause of the British North America Act, 1867. Those provisions apply exclusively to the denominational, separate or dissentient Schools. They do not in any way affect or lessen the power of Provincial Legislatures to pass laws respecting the general educational system of the Province

"The Act complained of is an Act relating to Common Schools, and the Act repealed by it apply to Parish, Grammar, Superior, and Common Schools. No reference is made in them to separate, dissentient, or denominational Schools, and the undersigned does not on examination find that any Statute of the Province exists establishing such Special Schools. * * As therefore the Act applies to the whole School system of New Brunswick, and is not specially applicable to denominational Schools, the Governor nor General has no right to intervene."

The Executive Council would not have thought it necessary to add anything in support of those conclusions; but the unwarrantable assumption in the Resolution of the House of Commons as to the effect of the recent legislation of this Province, and the attempt to maintain that the Roman Catholics had by the Parish School Act of 1853, (21 Vic. c. 9) rights or privileges with respect to denominational schools which bring the case under the 1st sub-section of section 93 of the British North America Act, would seem to render it necessary to examine more particularly the provisions of such section, and the various Acts of New Brunswick set out in paragraph 5 of the case.

In a question affecting the constitutionality of an Act of the Legislature, the Executive Council would refer to the principle which has been uniformly adopted in similar cases by the Supreme Court of the United States. In delivering the judgment of the Supreme Court, in *Dartmouth College vs. Woodward*, 4 Wheaton, 518, Chief Justice Marshall says:—

"This Court can be insensible neither to the magnitude nor delicacy of this question. The validity of a Legislative Act is to be examined, and the opinion of the highest law tribunal of a State is to be revised. On more than one occasion this Court has expressed the cautious circumspection with which it approaches the consideration of such questions, and has declared that in no doubtful case would it pronounce a Legislative Act to be contrary to the Constitution."

And again, in *Fletcher vs. Peck*, 6 Cranch, 128, the same learned Judge says:—

"The question whether a law be void for its repugnancy to the Constitution, is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The Court when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligation which that station imposes; but it is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the Judge feels a clear and strong conviction of their incompatibility with each other."

In a case in the Supreme Court of Massachusetts, *Wellington*, petitioner, 16 Pick. 95, Chief Justice Shaw held that—

"The Courts would never declare a statute void unless the nullity and invalidity of the Act are placed, in their judgment, beyond reasonable doubt."

And in another case in the Supreme Courts of the United States, *Ogden vs. Saunders*, 12 Wheat. 270, Mr. Justice Washington, after expressing the opinion that the particular question there presented, and which regarded the constitutionality of a State Law, was involved in difficulty and doubt, said:—

"But if I could rest my opinion in favor of the constitutionality of the law on which the question arises, on no other ground than this doubt, so felt and acknowledged, that alone would in my estimation be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity until its violation of the constitution is proved beyond all reasonable doubt."

By section 93 of The British North America Act 1867, the Provincial Legislatures have exclusive powers to make laws in relation to education, subject and according to certain provisions. Of these provisions, the first declares that nothing in any law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the Union. This provision is in general terms, and is only in limitation or restraint of the general grant of legislative power.

The second provision refers specifically to Quebec, extending to the dissentient schools of that Province the powers and privileges in Ontario accorded to the Roman Catholic separate schools; this provision imposes a duty on the Quebec Legislature to make the necessary laws for the due execution thereof. The third provision gives an appeal to the Governor General in Council from any act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects, in relation to education in any Province wherein a system of separate or dissentient schools existed by law at the Union, or should be thereafter established by the Legislature of the Province. Such a system of schools, whereby the religious minority is permitted to escape from the operation of the general public system, and to establish schools of the denomination, existed at the Union in the Province of Ontario under the name of "separate schools," and in the Province of Quebec under the name of "dissentient schools," but did not at the Union exist, nor has it since been established in any of the other Provinces.

The fourth provision (sub-section 4) relates to matters of procedure, and vests certain powers of remedial legislation in the Parliament of Canada.

In order to render any law of a Provincial Legislature inoperative under the 1st sub-section of section 93, it is requisite that there should in such Province have been at the Union, denominational schools, with respect to which certain class of persons had rights or privileges, and that those rights or privileges should have been secured by law.

This would seem to lead at once to the consideration of the laws in force in New Brunswick at the Union, for the purpose of determining whether, within the meaning of sub-section (1), section 93 of the British North America Act, the Roman Catholics had by such laws any rights or privileges with respect to denominational schools; and of the Common Schools Act, 1871, for the purpose of determining whether anything therein prejudicially affected such rights or privileges.

But it has been attempted to be shewn that the 1st sub-section of section 93 of the British North America Act, 1867, so clearly refers to New Brunswick, that the fact of such a section renders unnecessary any inquiry into its meaning or application. It is said that as sub-sections (2) and (3) refer specifically, or by clear intendment, to the case of Ontario and Quebec, sub-section (1) must refer to the case of the other Provinces, and therefore presumably to New Brunswick; and the use of the words "denominational schools" in the 1st sub-section, and of the words "system of separate or dissentient schools" in the 2nd and 3rd sub-sections, is referred to as indicating that the "denominational schools" in the 1st sub-section cannot include the separate or dissentient schools in the 2nd and 3rd sub-sections.

The effect and object of this view is to import a supposed intention which shall control the words, and relieve from the embarrassment of investigating the language of the 93rd section of the School legislation of New Brunswick.

The answer to this is:—

(1). That sub-section (1) may have been inserted with no particular intent, but *ex majore cautela*.

(2). That if it were intended to refer specifically to New Brunswick, analogy to the following sub-section would have suggested a particular reference.

(3). That inasmuch as in terms it is large enough to cover the case of any of the Provinces, it is sufficient to inquire whether it is in fact applicable to New Brunswick, without inquiring whether or not it does, or does not, apply to any other Province. It might equally be contended that it applies to other Provinces because it does not apply to New Brunswick.

(4). That sub-section (1) is the general abstract provision, applicable to any Province in which at the Union denominational schools existed by law, whether such schools be known as such, or by the secondary and applied name of separate or dissentient schools, and is the only section which imposes restraints upon the legislative power of the Provinces in respect thereto, the remaining sub-sections being particular and remedial provisions. This appears more clear when it is considered that in the scheme of Union

agreed to at Quebec by the representatives of the several Provinces in 1864, and which formed the basis of all the public discussions of the question of Union; the separate and dissentient schools of Ontario and Quebec were referred to as denominational schools; for, under the head "Local Government," Resolution 43, of the said scheme, it is declared that the Local Legislature shall *inter alia* have power to make Laws respecting the following subjects :—

"6th. Education : Saving the rights and privileges which the Protestant or Catholic minority in both Canadas may possess as to their denominational schools at the time "when the Union goes into operation."

(5). That in no view can the language of the Imperial Act be taken as an interpretation of the meaning of the New Brunswick Acts of Assembly.

(6). But in order to satisfy the terms of sub-section (1), it is not necessary to resort to the school system of New Brunswick, inasmuch as in each of the Provinces there were at the Union specific denominational schools existing by law, the rights held by the various classes with respect to which are rights protected by this sub-section. Thus in Nova Scotia :—King's College (Church of England); Acadia College (Baptist); Pictou Academy (Presbyterian); St. Mary's and St. François-Xavier Colleges (Catholic.) In Quebec :—Laval University (Catholic.) In Ontario :—Regiopolis Colleges, Bytown College, St. Michael's College, Victoria College, and L'Assomption College.

So in New Brunswick, standing outside of the general school system, and in no respect under the control or inspection of the public or educational authorities, and in no wise affected by the provisions of the Common Schools Act, 1871, there were three denominational schools :—the Madras School, in which the members of the Church of England have interests different from the public at large (see Acts of Assembly, 60th Geo. 3rd, Cap. 6); the Wesleyan Academy (see Acts of Assembly, 12th Vic. c. 65), and the Wesleyan College (see Acts of Assembly, 21st Vic. c. 57.)

If it were proposed by Provincial legislation to derogate from the statutable rights of those institutions, it might reasonably be contended that such legislation would be inoperative and void; for example, if it were proposed to deprive the Wesleyan College of the right of conferring degrees, or to interfere with the rights of the Governor and Trustees of the Madras School, under their Charter, confirmed by Act of Assembly, 60th Geo. 3rd, c. 6, or to repeal section 11 of the Act incorporating the Trustees of the Wesleyan Academy at Mount Allison, Sackville, which provides that—

"No person shall teach, maintain, promulgate or enforce any religious doctrine or practice in the said Academy, or any department thereof, or in any religious services "held upon the said premises, contrary to what is contained in certain Notes on the New Testament, commonly reported to be the Notes of the said Reverend John Wesley, "A. M., and in the first four volumes of sermons commonly reputed to have been written "and published by him."

It is submitted, therefore, that it cannot be assumed that the general provisions of sub-section (1), section 93, of the British North America Act, refer particularly to this Province; and much less that they refer to the general school system of the Province which existed under the several Acts of Assembly, 21st Vic. c. 9, 26th Vic. c. 7, and 30th Vic. c. 27.

Whether or not such sub-section does cover the case of schools established under the said several Acts of Assembly is a matter of interpretation of the language both of the Imperial and Provincial Statutes.

The Provincial Statutes consisted of the Parish School Act of 1858 (21st Vic. c. 9), and the Acts 26th Vic. c. 7, and 30th Vic. c. 27, in amendment.

The Parish School Act of 1858 was a general public Act, operating territorially through the Parish, which in New Brunswick constitutes the municipal unit for civil purposes. The Act provided for a central and local control of the schools; the central control consisting of the Board of Education, a Superintendent and four Inspectors, the local control consisting of three Trustees and a School Committee of three persons. The Superintendent and Inspectors were appointed by the Governor in Council, and the

Governor and his Council, with the Superintendent, constituted the Board of Education. The Trustees were Parish officers, elected by the rate-payers of the Parish at the same time, and in the same manner, as other Parish officers, and were subject to the same penalties as other Parish officers. (See section 6, clause 1, 21st Vic. c. 9.) They were thus officers of the Civil Government, performing civil functions, and amenable solely to civil authorities, and representing the people in their character as rate-payers, being no more religious bodies, or exercising denominational functions than the other Parish officers elected at the same time, and in the same manner, viz:—Overseers of the Poor, Constables, Assessors, and Collectors of Rates, Fence-Viewers, Pound-Keepers, Field-Drivers, Hog-Reeves, &c., &c.

Those Trustees, as Parish officers, divided their respective Parishes into convenient School Districts, convenient in respect of the civil purposes which the Trustees were elected to effect; and from time to time reconstructed them, and defined in writing the boundaries of each district, and filed a description thereof with the Clerk of the Peace. (See section 6, clause 2.)

The public, as opposed to the denominational system, is apparent in the provisions with respect to districting, for it is evident how impossible it would be to divide a Parish into districts territorially corresponding with the religious features of the population, and to define such boundaries in writing.

The Trustees as Parish officers controlled the appointment of the teacher, and gave authority to open the school. (See sec. 6, clause 3.) They might suspend, or displace, a teacher. (See section 6, clause 4.) They summoned a meeting of the rate-payers of the district for the purpose of electing a School Committee (see section 6, clause 5), and they apportioned amongst the School Districts in their respective Parishes any money raised by County or Parish assessment for the support and maintenance of the schools therein, in such manner as they might deem just and equitable. (See section 6, clause 10.)

In all this they acted solely as civil officers, and in the discharge of a public duty were governed by public considerations.

The remaining body having local control was the School Committee. This Committee was elected by the inhabitants of the School District being rate-payers (see sec. 7, clause 1), and had the immediate charge of the school-house and property, library, &c.; they called meetings of the district to determine upon the support of the school; had charge of the money of the district, and care and direction of the children. (See section 7, clauses 2-6.) And in towns and populous districts the rate-payers of the district might elect one or more Committees for the district, or a Committee for each school, as might be decided by a majority of the electors present. (See 26th Vic. cap. 7, sec. 2.) The school meeting was therefore a collection of rate-paying inhabitants of the district; and such meeting called for the purpose had power to order a rate for the support of the school, or the entire County or Parish might provide for the support of the schools of the County or Parish respectively by assessment. (See 21st Vic. cap. 9, secs. 11-22.)

The nature of the School District is thus defined in a judgment of the Supreme Court of New Brunswick, in *ex parte Jocelyn*, 2 Allen's Rep. 639:—

“When the Trustees establish School Districts, the foundation is laid of a special jurisdiction to be exercised by a majority of the inhabitants of the Parish or District rateable upon property, over all the inhabitants of the District.”

Such was the structure of the Parish School Act of 1858 (21 Vic. c. 9), and it is inconceivable that schools so created, so controlled, so sustained, could for a moment be regarded as denominational schools. They were clearly schools of the rate-payer, not of the denomination. They existed not in connexion with the denomination, but in connexion with the state, and vested no rights or privileges in any class of persons.

But it is alleged that although the schools of New Brunswick were not denominational schools, they were public schools in which denominational teaching was by law permissible; and that the school system of the Province at the Union might be described, not perhaps as a system of denominational schools, but as a system of public schools in

which denominational teaching was legalized, subject to a conscience clause in favor of those children whose parents, or guardians, objected to that teaching; and section 8, clause 5, of the Parish School Act of 1858, is relied upon. That clause is as follows:—

“ Every teacher shall take diligent care, and exert his best endeavors to impress on the minds of the children committed to his care, the principles of christianity, morality and justice, and a sacred regard to truth and honesty, love of their country, loyalty, humanity and a universal benevolence, sobriety, industry and frugality, chastity, moderation and temperance, order and cleanliness, and all other virtues which are the ornaments of human society ; but no pupil shall be required to read or study in or from any religious book, or join in any act of devotion objected to by his parents or guardians ; and the Board of Education shall, by regulation, secure to all children whose parents or guardians do not object to it, the reading of the Bible in Parish Schools,—and the Bible, when read in Parish Schools by Roman Catholic children, shall, if required by their parents or guardians, be the Douay version, without note or comment.”

The Executive Council would, however, maintain that no question of the character of the teaching in the public schools can suffice to restrict the general grant of legislative power on the subject of education vested in the Legislature of New Brunswick ; that sub-section (1) clearly requires the existence of denominational schools, and class rights therein secured by law ; that public schools, under the entire control of the ratepayer and the Provincial authorities, cannot, whatever the character of the tuition, be considered as denominational schools, any right of the individual ratepayer or inhabitant therein being a right as a member of society with respect to public schools, and not a class right with respect to denominational schools ; and that, in short, sub-section (1) has no reference to the general public system of education. But the Executive Council denies that the Parish School Act of 1858 legalized denominational tuition.

Now, in order to determine the extent to which this Act allowed religious teaching to be carried on in the public schools, it is necessary to look to the Act as a whole ; for the details of one part of an Act may contain regulations restricting the extent of general expressions used in another part of the same Act.

The right of the Board of Education to prescribe books, maps, and apparatus, for use in the Schools, may be implied from section 4, clauses 3 and 11, and from section 5, clause 7.

By section 4, clause 8, the Board of Education had power—

“ To provide for the establishment, regulation and government of School Libraries, and the selection of books to be used therein ; but no works of a licentious, vicious or immoral tendency, or hostile to the christian religion, or works on controversial theology, shall be admitted.”

When works on controversial theology are classed with obscene, vile, and infidel publications, and are deemed equally unfit for use in the Library, how can it be said that they may be taught in the School-room ? Prohibited from use under the eye of the parent, shall they be taught by the teacher ? Shall the Library be shut against them, and shall the School door be open to them ? And does not the exclusion from the Library of works on controversial or distinctive dogmatic theology, clearly show that in the contemplation of the Act the Schools were to be Schools of the public and not of any sect, and that the Legislature expressly sought to guard against the introduction of sectarian aims into the administration of School affairs ?

Again—“ The Board of Education shall secure to all children, whose parents or guardians do not object to it, the reading of the Bible in Parish Schools ; and the Bible when read in Parish Schools by Roman Catholic children, shall, if required by their parents or guardians, be the Douay version without note or comment.” (See section 8, clause 5.)

Why without note or comment ? If distinctive doctrinal teaching were allowed, why should the Bible when read by Roman Catholic children be the Douay version without note and comment ? Why not the Douay version *with note and comment* ?

Can it be seriously contended that the authorized note and comments by which the Roman Catholic Church declares the meaning of the Scripture, shall be excluded, and that the private judgment of the teacher shall expound its meaning, and that this is denominational teaching? Can this be "the fullness of distinctive religious teaching?" and can it be said that the principles of Christianity, which the law required to be impressed upon the minds of the pupils are the principles of Christianity "after a denominational fashion," when works on controversial theology and the Church's interpretation of the Bible were expressly excluded?

Can it be contended that the reading of the Bible, required by the Parish School Act of 1858 to be secured to every pupil, gave a denominational character to the Parish Schools? Although Roman Catholics might ask that their children should have the Douay Bible, without note or comment read, is not such Douay Bible but a different version of the Holy Scripture from the version which is used by Protestants? Neither version professes to be a denominational or sectarian book, but simply the Word of God; and as such, its use in school cannot be held to be denominational teaching.

It may also here be remarked, that although the Trustees of the Parish, the School Committee, and the Teacher, might be all Catholics; and although there might be but a single Protestant in the District, the Parish School Act of 1858 gave to his children the legal right, not only of attending such school, but of requiring the reading of the Protestant version in such school. This is utterly inconsistent with the idea that such a school could be a Roman Catholic denominational school; and it is submitted that the character of the school cannot, under the Law, be affected by the presence or absence of a Protestant or Roman Catholic child.

And further, in considering the intention of the Legislature, it is material to look at the consequences.

The clause of the 8th section above relied on is not permissive, it is mandatory. It does not allow any teacher who may feel disposed to do so, to inculcate the principles of Christianity; it requires every teacher to do so. If, then, by the "principles of Christianity," were meant the distinctive and denominational or sectarian expression of those principles, then did the Legislature impose upon every teacher, whether male or female, and however well or ill qualified, whether of the 1st, 2nd, or 3rd class, the absolute duty of teaching the principles of Christianity in their distinctive doctrinal features. It required every teacher to be a teacher of theology, without requiring any antecedent qualification; and turned every school into a nursery of the Church; a school of faith and polemics, with the further consequence that one school might at one and the same time be Protestant and Catholic; the head master teaching in one room according to his light the doctrines of Geneva, and the assistant teaching in another the doctrines of Rome.

It would also be a consequence of this that a District, by a bare majority of one amongst the rateable inhabitants, might impose assessment upon the entire District, for the purpose in effect of turning the school into a Sunday School for the propagation of the religious views of the majority. The death or removal of a ratepayer might change the character of the school, and the fate of a denomination might hang upon the solvency of one of its members. Almost every District would be annually torn by contending sects in their unseemly strife for power.

Such a system might be described as a system of concurrent endowment—of endowment of every sect that could secure a majority of one at a school meeting. In a country where no Church is preferred, and no Church established, it would place in the hands of a dominant sect the state power of taxation, to be wielded for Church purposes.

The meaning of section 8, clause 5, is then clear. The Legislature required every teacher to impress on the minds of the children the principles of christianity, in their non-denominational feature, but lest in so doing, and in the exercise of the discretion vested in the teacher, religious books might be used, or acts of devotion engaged in, to which any tender conscience might object, the conscience clause was inserted, that no pupil

should be required to read or study in or from any religious book, or join in any act of devotion objected to by his parent or guardian. The words of the conscience clause do not enlarge the teaching power, they restrict it. The religious books referred to are non-denominational ; such books as the Board of Education would admit to the library. But the teaching of distinctive dogmatic or controversial theology is of the essence of denominational teaching, while it may not unreasonably be concluded that the principles of Christianity to be taught relate largely to the Christian virtues enumerated in the section itself, in connection with such term.

It requires no great acquaintance with the works of Catholic and Protestant literature to point to numbers of books emanating from each communion, which, while in the fullest sense religious, do no more relate to distinctive doctrinal theology than the ten commandments or the Lord's prayer.

Whether or not the Legislature judged rightly, that the principles of Christianity are capable of being inculcated in a manner common to the different communions, is not material. It is sufficient that the Legislature thought it possible, following therein a very considerable body of authority.

As long ago as 1635, Sir Thomas Browne, referring to the attitude of the Protestant and Catholic Churches to each other, wrote :—

“ We have reformed from them, not against them ; for, omitting those impropriations and terms of scurrility betwixt us, which only difference our affections, and not our cause, there is one common name and appellation, one faith and necessary body of principles common to us both.”

And it is well known that in recent times Scripture lessons, sanctioned by the highest authority in the English and Roman Catholic Churches, were for years used with entire satisfaction in the National Schools of Ireland ; and the most recent Parliamentary discussions on Education show that the question of undenominational teaching is still a question of practical politics.

Such then was the school system of New Brunswick at the Union, and at the passing of the Common Schools Act, 1871 ; a system of public schools operating territorially over the entire Province ; springing out of the operation of the municipal system, subject to the control and inspection of the Government ; representing in its local management the ratepaying inhabitants of the District ; exercising at will the civil power of taxation ; providing for certain undenominational religious instruction, but providing by a strict conscience clause for the rights of conscience ; requiring the reading of the Holy Scriptures in the ordinary Protestant version, but in the case of the Roman Catholic allowing the Douay version without note or comment. To speak of such schools as denominational schools, involve the grossest misconception of language.

The term “ denominational schools ” clearly means the schools of or belonging to or in connection with a denomination, and in which the members of the denomination have, as such, interests other and different from the interest which they have in them as a portion of the public. Such schools are controlled by the denomination in its interests, and exist at least to a certain extent for denominational, as distinguished from public purposes.

The meaning of the term was well understood by the Imperial Parliament when the British North America Act was under consideration.

For thirty-six years a system of national, as distinguished from denominational schools, had existed in Ireland, under which combined literary and separate religious instruction had been given.

On the other hand, at the time of the passage of the British North America Act, the system of primary education in England was chiefly denominational, being carried on mainly through the instrumentality of schools in connection with the various denominations. But by the passage of the Elementary Education Act, 1870, the education of the country was placed on a public basis ; and whilst existing denominational schools, and those which might be established within a limited period, were recognized and continued in the receipt of public money, the Act provided for the formation of Local School

Boards, and the establishment of School Board Schools. By section 14, it is enacted that—

“ Every school provided by a School Board, shall be conducted under the control and management of such Boards, in accordance with the following Regulations :—

“(1.) The school shall be a public elementary school, within the meaning of this Act.

“(2.) No religious catechisms or religious formulary which is distinctive of any particular denomination, shall be taught in the school.”

Thereby, in the words of Mr. Gladstone, “ overthrowing, as far as the rate-school is concerned, the use of that which is the note and characteristic of denominational teaching ;” while, at the same time, admitting of religious instruction, and recognizing the possibility of imparting religious instruction without rendering the school denominational.

In the passage of such Act, the present Lord Chancellor thus described those schools, and the character of the religious teaching secured thereby :—

“ Religious teaching must be specific, but it need not be sectarian or denominational. The schools would be for every proper purpose, under public observation, superintendence, and control, and the exclusion of denominational formularies would tend to remind the teacher that he was not to constitute himself the organ of any particular denomination.”

So the Education (Scotland) Act, 1872, establishes a central Board of Education, and places the local control of the schools in the hands of a School Board, elected in each Parish and Burgh by electors with a rate-paying qualification. It vests all the Parish schools and property in the School Board, and abolishes all jurisdiction, power and authority possessed or exercised by Presbyteries or other Church Courts, with respect to any public schools. In schools so clearly non-denominational it however provides, that—

“ Every public school, and every school subject to inspection and in receipt of any public money, shall be open to children of all denominations, and any child may be withdrawn by his parents from any instruction in religious subjects, and from any religious observance in any such school ; and no child shall in any such school be placed at a disadvantage with respect to the secular instruction given therein by reason of the denomination to which such child or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects. The time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school for elementary instruction, shall be either at the beginning or the end, or at the beginning and at the end of such meeting, and shall be specified in a table approved of by the Scotch Education Department.”

But it would never be contended that such public schools were denominational schools because they admitted of religious instruction with a conscience clause.

In this Province the term denominational schools has always heretofore been applied to specific schools controlled by a denomination, in which the public, as such, had no rights or interest. These schools stood outside of the general public system, and from time to time their managers, in admission and full recognition of their anomalous position, made application to the Legislature for specific yearly appropriations from the revenue, and over these schools there was no public control or right of inspection.

It is also worth while to inquire what is understood to be denominational schools by the Church in whose interests the present reference is made. In a Pastoral Address of the Catholic Archbishop and Bishops of Ireland, dated at Dublin the 20th October, 1871, it is said :—

“ As to primary education, therefore, we demand—1st. For all schools which are exclusively Catholic, the removal of all restrictions upon religious instruction, so that the fulness of distinctive religious teaching may enter into the course of daily secular education, with full liberty for the use of Catholic books and religious emblems, and for the performance of religious exercises, and that the right be recognized of the lawful pastors of the children in such schools to have access to them, to regulate the whole

“business of religious instruction in them, and to remove objectionable books, if any.
“In such schools, the teachers, the books, and the Inspectors, should all be Catholic.”

Again, in the Province of Ontario, a system of public schools has existed for about twenty years. These schools not having met the requirements of the Roman Catholic Clergy, they broke away from the public school system, and procured the establishment, by law, of the “separate” schools referred to in sub-sections 2 and 3 of section 93, of the British North America Act, 1867.

On the 1st of last January, the Roman Catholic Bishop of London, Ontario, issued a Pastoral, which concluded as follows :—

“We have endeavored to point out the importance of Catholic education, and the dangers that result from an unchristian education. We have shewn that the education imparted in the Common Schools of Ontario cannot be religious, for the simple reason that it cannot in justice to all sects be denominational. We have pointed out the duty of our Clergy and of our Catholic parents on this subject, and we earnestly exhort them to be faithful to it. To insure the efficient working of our separate school system, we, having invoked the holy name of God, deem it our duty to ordain as follows :—

“Art. 1. No Catholic parent living within the legal limits of a separate school, shall send his children to mixed or common schools, they being adjudged by the Canadian hierarchy as dangerous to faith and morals. Should any Catholic parent unfortunately persist in violating this ordinance, he shall be refused the Holy Sacraments until such time as he shall consent to obey the Church in this matter.

“Art. 2. Every Catholic rate-payer, living within the legal limits of a separate school, shall pay his school taxes to said school, under a penalty of being refused the Holy Sacraments. If for grave and special reasons, exemptions should be claimed from these ordinances, let the Pastor, and if necessary, the Bishop, be consulted, and their directions followed.

“We hereby renew the wise ordinance of our predecessor :—

“Art. 1. In any School Section whose Trustees are Catholics, no other than a practical Catholic shall be chosen to fulfil the duties of a teacher, whether male or female.

“Art. 2. The School Trustees are to consult their respective Pastors in regard to the appointment or dismissal of the said teachers, as well as in all that concerns the general good of the Parochial Schools.

“Art. 3. In case of a dissent between the Pastor and the Trustees in this matter, recourse shall be had to the Bishop, who, after hearing both sides, will give a decision, which shall be final.

“Art. 4. Inasmuch as any school, established and maintained in opposition to these rules can no longer be considered as Catholic, the Pastor, after consulting the Bishop, will forbid parents to support said schools, or to send their children thither.”

Now what is the character of the schools, to attend which, as dangerous to faith and morals, subjects the offender to the refusal of the Sacraments ? They are schools in which by the 129th section of the Consolidated Common Schools Act of Upper Canada, 22 Vic. cap. 64, it is provided, almost in the language of the New Brunswick Parish School Act of 1858, that—

“No person shall require any pupil in any such school to read or study in or from any religious book, or to join in any exercise of devotion or religion objected to by his or her parents or guardians ; but within this limitation, pupils shall be allowed to receive such religious instruction as their parents and guardians desire, according to any religious regulations provided for the government of Common Schools.”

And by Regulation 5 of the Regulations made by the Board of Education under such Act, it is provided that the teacher “shall daily exert his best endeavors, by example and precept, to impress upon the minds of pupils the principles and morals of the christian religion, especially those virtues of piety, truth, patriotism, and humanity, which are the basis of law and freedom, and the cement and ornament of society.”

It is with reference to such schools that the Bishop of London says, that the education therein imparted cannot be religious, for the simple reason that it cannot in justice to all sects be denominational.

Inasmuch then as in New Brunswick at the Union, and at the time of the passing of the Common Schools Act, 1871, the Roman Catholics had by law no rights or privileges with respect to denominational schools, nothing in the Common Schools Act can have deprived them of rights or privileges which they did not previously enjoy. The effect of the Common Schools Act was to repeal the Parish School Act of 1858, and the amendments thereof; to alter the distribution of power between the local and general authorities; to substitute a system of rate-supported schools for a system of schools supported either by rates or voluntary subscription. On the question of religious teaching it preserves silence,—neither excluding the Bible from the school nor legislating it into the school; neither requiring nor prohibiting the inculcation of the principles of christianity in their non-denominational features; neither prescribing nor proscribing such religious instruction, but simply providing that the schools should not be turned to sectarian purposes.

In this connection the Executive Council would refer to some of the allegations of the Petition of Rev. C. Lefebvre and others, set out in paragraph four of the case.

It is there stated that under the School Law in force at the Union, and up to the passing of the Common Schools Act, 1871, the Catholics were enabled, wherever their numbers were sufficiently large, to establish schools in which a good religious and secular education was afforded.

No such right existed “under the law” nothing in the Parish School Act of 1858 prevented the establishment of private schools outside of the law, as nothing in the Common School Acts, 1871, prevents the establishment of similar schools. An irregular and defective administration of the law might tolerate illegal practices, and allow parties to derive unwarrantable advantages in violation of the law; but privileges enjoyed in violation of the law cannot give rights under the law. For example:—The Executive Council does indeed find that at one time certain of the branches of the Madras School, a denominational school existing by special Act, and under special control, inconsistent with the public control provided for by the Parish School Act of 1858, did, whilst receiving specific pecuniary grants yearly voted by the House of Assembly in aid of Special Schools, also receive the allowances from the Provincial Treasury secured by the Parish School Act of 1858 to the teachers of Parish Schools, the same having been improperly recognized by the local Trustees and School Committees as a Parish School. But this imperfect administration of the law has never been by the Governor and the Trustees of the Madras School claimed to give a legal status under the law. It was an irregularity which the law was of itself sufficient to check.

It is also stated—“That in districts in which Catholics were too few in numbers to maintain separate schools,”—a term never known in this Province as applied to the schools of New Brunswick—“they could not be compelled to contribute to the support of any schools in which they had reason to apprehend that anything would be done to sap the faith or weaken the religious convictions of their children, and that this afforded them a safeguard and protection which the Act lately passed will wholly destroy.”

And, in the same petition, the injurious operation of the Common Schools Act, 1871, is thus described:—

“That in the several School Districts into which the Counties are to be divided, other sums are to be raised for school purposes, and the determination of the amount and of the mode of expenditure, the appointment of Trustees, and all that concerns the management of the schools, are vested absolutely in the majority, thus by process of law depriving your petitioners, who, in most instances, are in the minority, of all rights and all the protection of law.”

Nothing could more clearly mark the confusion of mind into which the petitioners have fallen.

For, under the Parish School Act of 1858, as well as under the Common School Act, 1871, the Districts into which the Counties were divided had the power of raising school

money by assessment, and determining the amount and the mode of expenditure ; and all that concerned the management of the schools was vested absolutely in the majority. Thus, in the language of the petition, "depriving the petitioners, who, in most instances, are in the minority, of all rights and all the protection of law."

Under the Common Schools Act, 1871, this power of the majority cannot be used to compel the minority to support schools in which the distinctive doctrines of any sect may be taught.

But if the contention of those be correct, who maintain that the Parish School Act of 1858 provided for denominational schools, or legalized denominational teaching, the power of the majority could, under that Act, have been exercised to compel Catholics to contribute to the extension of Protestant doctrines. Thus, in the words of the petition, "depriving Catholics, who, in most instances, are in the minority, of all rights and all the protection of the law."

If, as alleged, Catholics could not, under the Parish School Act of 1858, be compelled to contribute to the support of any schools in which they had reason to apprehend that any thing would be done to sap the faith or weaken the religious convictions of their children, it could only be on the supposition that that Act which gave to the majority the power of ordering assessment, did not admit of denominational schools being established under its provisions.

It is thus evident that the Common Schools Act, 1871, so far from prejudicially affecting the rights of Catholics, secures them against the possibility of hostile action of the Protestant majority ; and that no more dreadful consequence could fall upon the Roman Catholics, who are one-third of the population, than the re-enactment of the Parish School Act, with the interpretation sought to be placed upon it, of legalizing the establishment of denominational schools, or the teaching of sectarian theology.

Another objection to the Common Schools Act is, that it deprives Catholic graded schools in the cities—and large towns of pecuniary legislative grants.

The answer to this is, briefly—

(1.) That such grants were not secured by law, but were simply annual votes passed in Supply in aid of Special Schools.

(2.) That the Common Schools Act, 1871, does not seek to restrict the right and power of the House of Assembly to dispose of the public funds as it may from time to time think proper.

The second general question involved in the Resolution of the House of Commons relates to the extent of the power of the Parliament of Canada to pass remedial laws in reference to education.

If the foregoing remarks, in respect of the power of the Legislature of New Brunswick to pass the Common Schools Act, 1871, be correct, and if there be nothing in that Act contravening the provisions of section 93 of The British North America Act, 1867, it is evident that the Parliament of Canada can have no right of legislation in the matter, remedial or otherwise.

But the Executive Council are not prepared to admit that the Parliament of Canada would, in any event, have legislative jurisdiction. An examination of section 93 would appear to shew that the power of the Parliament of Canada does in no way extend beyond the matters specifically referred to in sub-sections (2) and (3).

Sub-section (1) is a general abstract provision in limitation of the general grant of legislative powers given to the local legislatures in the matter of education. It is a general saving clause, under which the rights of the Roman Catholic and Protestant minorities in Ontario and Quebec, in respect of their separate and dissentient schools, are saved ; whilst for greater caution, being extended to cover similar rights in any of the Provinces, should such exist. It is the generalized expression of the following provision of the Quebec Scheme, before alluded to :—

"(6) Education, saving the rights and privileges which the Protestant or Roman Catholic minority in both Canadas may possess, as to their denominational schools, at the time when the Union goes into operation ;"

which Quebec Scheme having been the basis of the desire for Union referred to in the preamble of The British North America Act, 1867, may be looked to for light in the interpretation of the latter Act.

Now the effect of this general saving clause is, that it shall be read into every Act of the several local Legislatures respecting education. It is the same as if such words were expressly inserted by way of proviso in every such Act ; and so far, and only so far, as the rights thereby secured are prejudicially affected by Provincial legislation, the Act becomes inoperative and devoid of force of law. Those rights continue as before unaffected by any legislation, and the Courts will uphold such rights in the same manner as if they were expressly saved by such legislation.

It is to be further noted, that the provision is negative and restraining. It does not require the Legislature to enact laws for the preservation of the rights referred to : it simply requires that the Legislatures shall not in certain cases make laws, and provides that if they do, their legislation shall be, *ultra vires*, or at least that it shall not operate to effect certain objects.

Sub-section (2) on the other hand, grants certain rights to the minorities in Quebec, and therefore imposes impliedly on the Legislature of that Province the duty of executing such provision.

Sub-section (3) provides a remedy by appeal to the Governor General in Council from any act or decision of any Provincial authority affecting any right or privilege of the Protestant or Catholic minority in relation to education in any Province wherein separate schools exist by law, (whether at the Union or subsequently established). Here it is to be observed that the words "act or decision of a Provincial authority," rather seem to point to matters of administration, as, for instance, to the acts or decisions of the Executive authority, or of the Board of Education.

Sub-section (4) vests certain powers of passing remedial laws in the Parliament of Canada. But it is to be noted that this power is given in but two cases—

1st. Where any Provincial law, as seems to the Governor General requisite for the due execution of the provisions of the section, is not made ; and

2nd. Where any decision of the Governor General in Council on any appeal under the section is not duly executed by the proper Provincial authority in that behalf.

Taking the second branch of the power first : it gives the right of legislation where the decision of the Governor General in Council on appeal is not duly executed by the proper Provincial authority ; but the jurisdiction of the Governor General on appeal is limited to cases arising under sub-section (3).

The other branch of the power is where the Provincial Legislature has made default in passing the requisite legislation for the due execution of the provisions of the section.

This is clearly applicable only to sub-section (2), under which something is required to be executed. The minority in Quebec is thereby vested with certain rights, and the duty cast upon the Legislature of that Province to pass the necessary legislation to effectuate the object ; in other words Provincial Law becomes necessary for its execution. But the words are not applicable to sub-section (1), by which Provincial Legislatures are not required to act, but are forbidden from acting, and by which the legislation of the local Legislatures is, to the extent that it contravenes the provisions of sub section (1), entirely inoperative and of no force of law, being to that extent *ultra vires* and unconstitutional.

Nor does it impair the force of this, that the power of the Parliament is not expressly limited to cases under sub-section (2) and (3), but extends to the section, because the section is in its nature entire ; and the same extended reference is made to the "section" in the case of the failure to execute the appeal of the Governor General in Council, as in the case of the failure to have the requisite legislation. The words in the one are—"any decision of the Governor General in Council on any appeal under this section," and in the other—"any Provincial law requisite for the due execution of the provision of this section." But it is clear that the appeal only lies under sub-section (3), and the word "section" there means that part of the section to which the case is properly referrible.

In short, the power of legislation is in the Parliament of Canada in two cases ; the case were appeal lies to the Governor General in Council, under sub-section (3), and the case were something which is required to be executed, is not executed, as under sub-section (2). The provisions of sub-section (1) do not require execution, or the passage of any Provincial Law to execute them. They execute themselves, and subject all Provincial Laws to their operation. No remedy is needed, because no wrong can be inflicted ; they lie in the protection of the law. But as in the system of denominational schools, such as those of Ontario and Quebec, Provincial authorities may by act or decision interfere with rights or privileges, the section makes provision under sub-section (3) for such cases of injurious administration, act, or decision.

The Executive Council would further observe, that while the subject was under discussion by the House of Commons, and before the adoption of the Resolution of the 30th May, they, on the 29th May last, caused to be transmitted by telegraph to the Privy Council of Canada, the Minute of Council, of which a copy is hereunto annexed, marked A, by which it will be seen that the Government of New Brunswick, on behalf of the people of that Province, entered their most earnest protest against any dealing with the Common Schools Act, 1871, by the Parliament of Canada.

The Executive Council in making the foregoing remarks, do not desire it to be understood that they are assenting parties to the submission to the opinion of the Law Officers of the Crown in England, of the right of the New Brunswick Legislature exclusively to deal with the subject of Education ; on the contrary, they most respectfully now enter their protest against any such submission ; and while they entertain that just respect which should properly be accorded to any opinion on the subject emanating from such distinguished Lawyers, they foresee the greatest danger as likely to arise from such a course.

The question, whether the Common Schools Act, 1871, is *ultra vires* within the intent and meaning of the 93rd section of The British North America Act, 1867, is at present pending in the Supreme Court of New Brunswick, and the parties in whose interest it is now sought to obtain the opinion of the Law Officers of the Crown, have had their views, with all the facts, presented and argued before the Supreme Court by some of the ablest gentlemen of the Bar in New Brunswick. The decision and judgment of the Supreme Court will be given in Hilary Term (February) next, and as an Appeal from such judgment will lie to the Judicial Committee of the Privy Council, it does appear to the Executive Council that any opinion that the Law Officers of the Crown may give, can in no way settle the question ; for should the opinion of the Law Officers of the Crown differ from the judgment of the Supreme Court, neither the Legislature nor the Courts of New Brunswick would feel bound by such opinion. And, again, were the opinion of the Law Officers so differing, such as to lead the Dominion Parliament to legislate upon the subject, any such law of the Dominion Parliament might, by the New Brunswick Courts, be held to be *ultra vires*.

The Supreme Court of New Brunswick, in the case of *The Queen vs. Chandler*, 1 Hannay's Reports, p. 548, having held that—

“ An Act passed by the Legislature of New Brunswick on the 23rd March, 1868, ‘intituled, An Act in amendment of Chapter 124, Title 34 of the Revised Statutes, ‘Of Insolvent Confined Debtors,’ was an Insolvent Act which the Legislature of New Brunswick had no power to pass since The British North America Act, 1867, came into force, and was therefore invalid and void ; the Parliament of Canada having, under the Imperial Statute, the exclusive power to legislate on Bankruptcy and Insolvency ; and that the assent of the Governor General to such Provincial Act would not make it valid ; the Court holding that where an Act of the local Legislatures conflicts with the British North America Act, (it being an Imperial Statute) the Court will pronounce upon its ‘validity ;’

they may and no doubt would equally hold as *ultra vires* any legislation of the Dominion Parliament interfering with the exclusive power of the New Brunswick Legislature to legislate on the subject, with the sole limitation mentioned in the 1st sub-section, section

93, British North America Act ; and thus if the Common Schools Act, 1871, be determined by the Supreme Court to be not *ultra vires*, it is clear any Act passed by the Parliament of Canada on the subject, upon the assumption that it is so, would be necessarily of no force or effect.

Entertaining the strongest view possible of the constitutionality of the Common Schools Act 1871, the Executive Council would regret to see such a conflict of law as would arise should the Supreme Court uphold that view, and the Law Officers of the Crown arrive at a contrary conclusion, and they see, as the only legal and constitutional determination of the question, an appeal to the Judicial Committee of the Privy Council, from the judgment of the Supreme Court, by the dissatisfied parties.

Any other course than this will not prove satisfactory to the people of New Brunswick, and in no other way, and by no other judgment, will they permit their rights, in the matter of the Act in question, to be settled.

A.

IN COUNCIL, 29TH MAY, 1872.

Read the following Memorandum of the Executive Council in Committee :—

The Executive Council in Committee have observed the introduction into the House of Commons of Canada, of a Resolution that an Address be presented to Her Majesty, praying that she will be pleased to cause an Act to be passed amending The British North America Act, 1867, in the sense in which the House of Commons believes to have been intended at the time of the passage of the said Act, by providing that every religious denomination in the Provinces of New Brunswick and Nova Scotia shall continue to possess all such rights, advantages and privileges with regard to their Schools, as such denomination enjoyed in such Province at the time of the passage of the said last mentioned Act, to the same extent as if such rights, advantages and privileges had been duly established by law.

The avowed object of such Resolution is the overthrow of the recent legislation of New Brunswick relating to Common Schools, which legislation is admittedly within the powers of the Legislature of this Province under the Constitution as it exists.

Upon the question of fact embodied in the Resolution, the Committee beg to say that in none of the discussions and negotiations publicly carried on previous to the Union, was it regarded by any parties in this Province that the then existing legislation upon the subject of Education partook in any respect of the character of finality, or conferred vested rights upon any class, nor did any portion of the people of New Brunswick openly seek to secure the permanence or continuance of such legislation and procedure. There had not been in this Province, as in some of the other Provinces, any legislative compromise on the question of denominational education, and the people of New Brunswick would certainly have repudiated any arrangement which sought to limit their freedom of action.

It appears to have been reserved for the representatives of other Provinces of the Dominion to discover that the assumed privileges of a certain portion of the people of New Brunswick were intended to be secured to a greater extent than was by them at the time supposed or intended.

It is now proposed that the powers of the Provincial Legislatures shall be determined, not by the language of the Constitution, but according to the sense which is believed to have been intended by a body that at the time of the passage of the Act had no existence, and from which in this case the Constitution expressly withdraws the power of legislation.

The Committee, desirous of preserving the Union, cannot refrain from drawing the attention of the Government and Parliament of Canada to the alarming character and consequences of the above Resolution. Those consequences far outweigh in importance the particular subject involved. The assumption, by the Government and Parliament of Canada, of the right to seek the imposition of further limitations of the powers of

the Provincial Legislatures is subversive of the federal character of the Union, tending to the destruction of the powers and independence of the Provincial Legislatures, and to the centralization of all power in the Parliament of Canada.

The people of New Brunswick cannot and will not so surrender their rights of self-government within the limits of the Constitution, and will regard the passage of such Resolution as an infringement of the Constitution by those whose duty and interest should lead them to uphold the rights of the Provinces, while maintaining the powers of the General Government.

The Executive Council in Committee therefore hasten to warn the Government and Parliament of Canada of the danger involved in the passage of the said Resolution, which if passed, whatever its effect upon the course of Imperial Legislation, must stand as a precedent of innovation of Provincial rights, fruitful of evil; and in the name of the people of New Brunswick, and invoking the protection of the Constitution, the Executive Council in Committee protest against the passage of such Resolution, and emphatically assert the right of the Legislature of New Brunswick to legislate upon all questions affecting the Education of the country, free from interference by the Parliament of Canada.

[Approved.]

[N. B.—No. 14.]

OFFICE OF THE SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 4th January, 1873.

SIR,—I have the honor to acknowledge the receipt of your despatch, No. 97, of the (No. 3.) 31st ultimo, covering a Copy of a Minute of your Executive Council, on the case submitted by the Dominion Government for the consideration of the Crown Officers in England, on the New Brunswick School Act of 1871, and requesting that the same may be laid before the Governor General, with a view to its transmission to the Right Honorable the Secretary of State for the Colonies.

Your Despatch and its enclosures will be submitted without delay for the consideration of His Excellency in Council.

I have, &c.,

(Signed,) JOSEPH HOWE,
Secretary of State for the Provinces.

The Honorable L. A. Wilmot,
Lieutenant Governor, Fredericton.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 10th January, 1873.

The Committee have had under consideration the Despatch, No. 97, dated 31st December, 1872, from the Lieutenant Governor of New Brunswick, enclosing Copy of a Minute of his Executive Council, on the case submitted by the Dominion Government for the consideration of the Crown Officers in England, on the New Brunswick School Act of 1871, and requesting that the same may be laid before Your Excellency for transmission to the Right Honorable the Secretary of State for the Colonies, to be submitted to the Crown Officers.

The Committee advise that Your Excellency will be pleased to transmit the Minute in question to the Earl of Kimberley to be laid before the Crown Officers, as requested.

Certified.

(Signed,) W. A. HIMSWORTH,
Clerk, Privy Council.

To the Honorable
The Secretary of State for the Provinces, &c.

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 7th November, 1872.

MY LORD,—I am directed to enclose to your Lordship Copy of a Report from the Honorable the Minister of Justice, relating to the School question in New Brunswick, with Copy of a Report of the Committee of the Honorable the Privy Council, approved by His Excellency the Governor General on the 6th November, 1872.

I have the honor to be, my Lord,

Your most obedient servant,

E. PARENT,

Under Secretary of State.

The Right Reverend John Sweeny, D.D.,
Bishop of St. John, New Brunswick.

CATHEDRAL OF THE IMMACULATE CONCEPTION,
ST. JOHN, NEW BRUNSWICK, November 18th, 1872.

SIR,—I beg to acknowledge the receipt of your letter of the 7th instant, with Copy of a Report from the Honorable the Minister of Justice, relating to the School question in New Brunswick, and Copy of a Report of the Committee of the Honorable the Privy Council, approved of by His Excellency the Governor General on the 6th November, 1872.

I shall avail myself of the opportunity of sending you, as soon as possible, a paper containing some observations on this question, respectfully requesting that it be transmitted to England with the Report, &c., of the Honorable the Minister of Justice.

I have the honor to be, Sir,

Your obedient humble servant,

† J. SWEENY,

Bishop of St. John.

The Honorable J. C. Aikins,
Secretary of State, &c., &c.

CATHEDRAL OF THE IMMACULATE CONCEPTION,
ST. JOHN, NEW BRUNSWICK, January 18th, 1873.

SIR,—I beg to forward the enclosed printed papers, containing the opinions of Charles Duff and C. W. Weldon, Esquires, legal gentlemen of high standing in their profession regarding the School law of New Brunswick, lately passed by our Local Legislature, and also statistics to show that the Catholics have been deprived, by this law, of privileges—the right to give religious instruction in the Schools, to establish Catholic Schools, &c.—which they enjoyed and exercised freely under the former School laws of the Province.

I send these papers in accordance with the Report of the Committee of the Honorable the Privy Council, approved by His Excellency the Governor General on the 6th November, 1872, in order that they may be transmitted to England with the Report of the Honorable the Minister of Justice. I have been obliged to delay longer than I had intended sending in these documents, on account of the stormy weather of the past month and the difficulty, in consequence, of communicating with distant localities.

I beg most respectfully to request that this question, so important to the Catholics of New Brunswick, may be brought before the Judicial Committee of Her Majesty's Privy Council, and, if possible, to be informed when it may be brought before them, in order that we may have the opportunity of employing counsel in England to represent us.

I have the honor to be, Sir,

Most respectfully,

Your obedient humble servant,

† J. SWEENY,

Bishop of St. John.

The Honorable J. C. Aikins,
Secretary of State of Canada, &c.

To the Right Rev. John Sweeny, D.D., Bishop of St. John, N.B.

ST. JOHN, N.B., Jan. 6th, 1873.

YOUR LORDSHIP,—Agreeably to Your Lordship's wish, we have perused the Copy of a Report of The Honorable The Minister of Justice, dated 30th October, 1872, submitting, in accordance with the Resolution adopted by the House of Commons, on the 30th of May last, a statement for transmission to Her Majesty's Secretary of State for the Colonies, in order that the opinion of the Law Officers of the Crown in England, and if possible, the opinion of the Judicial Committee of the Privy Council, might be obtained as to the right of the New Brunswick Legislature to make such changes in the School Law as deprived Roman Catholics of the privileges which they enjoyed at the time of the Union, in respect of religious education in the Common Schools, with the view of ascertaining whether the case comes within the terms of the 4th sub-section of the 93rd clause of the "British North America Act, 1867." We have also read the Copy of the Report of the Committee of the Honorable the Privy Council thereon, of the 6th November, 1872, advising that it should be transmitted by His Excellency the Governor General to the Right Honorable the Secretary of State for the Colonies; and that Copies of it should be forwarded to the Lieutenant Governor of the Province, and to Your Lordship for any remarks which the Lieutenant Governor or Your Lordship might think proper to make thereon, and that Your Lordship might desire should be transmitted therewith to the Right Honorable the Secretary of State for the Colonies.

The statement of The Honorable the Minister of Justice, sets forth :—1st. The resolution of the 30th May, 1872. 2nd. The 93rd clause of the British North America Act, 1867. 3rd. The Common Schools Act, 1871. 4th. The Petition of the Roman Catholic Hierarchy, Clergy, and Laity of this Province, to His Excellency the Governor General, praying that the "Common Schools Act, 1871," might be disallowed, as affecting and diminishing the educational privileges which the Roman Catholics enjoyed in this Province at the time of the Union; the reply of the Under-Secretary of State for the Colonies thereto; an extract from a Report of the Honorable the Minister of Justice upon the Petition dated 20th January, 1872, advising that the "Common Schools Act, 1871," should be allowed to go into operation; a correspondence between the Reverend James Quinn and the Governor General's Secretary. 5th. Copies of various Acts of the Province of New Brunswick which were in existence at the time of the union, and which were repealed by the Common Schools Act, 1871. 6th. The proceedings in the House of Commons on the 21st, 22nd, and 29th May, 1872.

Involved in this statement, and altogether behind the question arising out of the resolution of 30th May, 1872, is the correctness of the opinion given by the Honorable the Minister of Justice in his report of the 20th May, 1872. Of course Your Lordship is not prepared to regard that opinion as conclusive, so far as relates to the *Constitutionality* of the "Common Schools Act, 1871." In the event of its being decided that this is a case for the intervention of the Dominion Parliament under sub-section 4, there is no doubt that the Roman Catholics of the Province may safely leave the protection of their rights and privileges to that Parliament; but, should the Judicial Committee be of a contrary opinion, then another, and, in a constitutional point of view, a not less important question remains to be decided, viz. :—whether it is not covered by sub-section 1.

According to the opinion of The Honorable the Minister of Justice, the high respect which any legal opinion of his is always entitled to receive, we cannot help thinking that the one which he gave in his report of the 20th January, 1872, so far as it relates to the constitutionality of the "Common Schools Act, 1871," is erroneous. He says :—"The Provincial Legislatures have exclusive powers to make laws in relation to education, subject to the provisions of the 93rd clause of the British North America Act. These provisions apply exclusively to the *Denominational*, Separate or Dissident Schools, they do not in any way affect or lessen the power of such Provincial Legislatures to pass laws respecting the general educational system of the Province. The Act complained of is an

Act relating to Common Schools, and the Acts repealed by it apply to Parish, Grammar Superior, and Common Schools. No reference is made in them to Separate, Dissentient or Denominational Schools, and the undersigned does not, on examination, find that any Statute of the Province exists establishing such special schools. As therefore the Act applies to the whole School System of New Brunswick, and is not specially applicable to Denominational Schools, the Governor General has, in the opinion of the undersigned, no right to intervene."

The 93rd clause of the British North America Act gives the Local Legislatures power exclusively to make laws in relation to Education, provided those laws do not "prejudicially affect any right or privilege with respect to Denominational Schools, which any class of persons have by law in the Province at the Union." Is not this a qualification of the power of the Local Legislature to make "Laws respecting the General Educational System of the Province?" If it should pass a law respecting "The General Educational System of the Province," any of the provisions of which did "prejudicially affect" any such right or privilege, would not that law, or its provisions to the extent to which they affected such privileges, be *ultra vires* and void? If not, the first sub-section would seem to be entirely inoperative.

It may be difficult to define, with certainty, what the Imperial Legislature meant in the 1st sub-section; but surely the Minister of Justice is in error when he assumes that they intended to use the word "Denominational" there as synonymous, or rather as corresponding with the terms "Separate" and "Dissentient" in the other sub-sections. If such had been their intention, one would expect to find it associated with these terms in the 3rd sub-section—but it is not. The fact that it is not so associated with these words there, affords a strong, if not a conclusive argument, that it ought not to be associated with them at all. The Legislature has not placed them in the same category, and what right have we to do so?

The word "Denominational" itself is of modern invention; it is not to be found in Johnson and Walker's Dictionary. In the Imperial Dictionary it is defined as "of or pertaining to a denomination." When we find it, as here, in the same clause with "Separate" and "Dissentient," we must conclude that it was intended to convey a meaning *somewhat different* from either of these words, or that it was meant to be applied to a different state of circumstances, else why is it used at all? In the 2nd sub-section, the words "Separate" and "Dissentient" are applied to the Schools of the Roman Catholic Minority in Upper Canada, and those of the Protestant Minority in Lower Canada. In both these Provinces the Schools of the Minority are Separate Schools. In Upper Canada they are designated *eo nomino* (Consolidated Acts of Upper Canada, p. 768, 22 Vict., c. 65); in Lower Canada they are called "Dissentient," (vide Consolidated Acts, Lower Canada, p. 61). These terms in that sub-section are both used to signify Schools which are under the separate and exclusive control of the Roman Catholics or the Protestants respectively, as the case might be, and they are not confined in their application to the Provinces of Old Canada. By the 3rd sub-section they are made applicable to any School of a similar character which might then be in existence, or which might thereafter be established in any Province of the Union. If the Roman Catholics had a system of *Separate* Schools, established by law, in this Province or in Nova Scotia at the time of the Union, they are comprehended within the 3rd sub-section beyond a doubt; and, unless the 1st was intended to apply to a different description of Schools, there was no necessity for inserting it in the Act at all. By every rule of construction, it seems to us that the word "Denominational" in this connection, must be taken to refer to Schools, not of the same exclusive character as the Separate Schools of Upper Canada, but which shall yet possess something "pertaining to denominations." Would there be nothing "pertaining to denominations" in Schools where, whilst the Bible is read, the conscientious scruples of each denomination are respected. Schools of this kind would not be Separate—would not be Dissentient, but they would surely be Denominational. We are at a loss to conceive what Schools could exist, possessing features "pertaining to denominations" and which would *not* be *Separate* Schools.

unless they are of this mixed kind where Denominational Teaching is recognised and protected. In Quebec and Ontario the rights of the Protestants and Catholics in these respects are amply protected and secured by the 2nd and 3rd sub-sections. In Nova Scotia there is no system of Schools to which the language of either section could be applied, but, in this Province, the Act 21 Vict., c. 9 (1858), secured to Roman Catholics a Denominational right precisely of this kind. That Act regulated the Common Schools (in the Act itself very inappropriately called *Parish Schools*), at the time of the Union.

By the 8th Section it is, amongst other things, enacted, "That every teacher shall take diligent care, and exert his best exertions to impress on the minds of the children committed to his care the *principles of Christianity*, Morality, &c., &c. ; but no pupil shall be required to read or study from any *religious book*, or join in any *act of devotion* objected to by his parents or guardians, and the Board of Education shall, by regulation, *secure to all children whose parents or guardians do not object to it, the reading of the Bible in Parish Schools* ; and the Bible, when read in Parish Schools by Roman Catholic Children, shall, if required by the parents or guardians, be the *Douay Version*, without note or comment."

This Section secures the teaching of *Christianity* to all ; it *secures the reading of the Bible* in the Schools to all who do not expressly object ; it *secures to the children of Roman Catholics the Douay Version*. It does more, it sanctions the use of Religious Books and Acts of Devotion by all pupils whose parents do not object to them. Can it be said that there is nothing "pertaining to denominations" in Schools established under this section ? In any School established under this Act, at which the children of both Protestant and Roman Catholic parents attended, the conscientious scruples of each denomination would be protected. And thus whilst it would not be separate, it would be denominational. In Schools of this mixed character, it would be difficult, if not impossible, to give a right of appeal for every alleged violation of the rights of a pupil, such as is given by the 3d sub-section where Separate and Dissentient Schools exist, and therefore we do not find the Denominational classed with the Separate and Dissentient Schools in that section, as they most certainly would have been, if they possessed the same exclusive character, and were under the exclusive control of either denomination. Furthermore, the rights of the minorities in these Schools were of a *negative* rather than a positive character. The parents may *object* to the Bible being read, or to any but the *Douay Version*, or they may *object* to Religious Books or to Acts of Devotion. If they do not object, either version of the Bible must be read, and any religious book may be read, or any Acts of Devotion may be performed. So, in the British North America Act, 1867, the difference there in the phraseology of the first from that of the second, third, and fourth sub-sections is marked and significant. The former is negative, the latter are affirmative. If the first sub-section had been framed expressly with a view to protect rights of the peculiar kind possessed by Roman Catholics in the Schools of this Province, it would be difficult to find language more appropriate for the purpose.

From another point of view the language of that sub-section is singularly appropriate to the rights enjoyed at the time of the Union by Roman Catholics in this Province, in connection with the Common Schools then established, arising out of local circumstances. It will be observed that it is not merely a system of *Denominational Schools*, as it is a *system* of Separate or Dissentient Schools in the context, which is protected by this sub-section. The Minister of Justice has indeed so read it ; but we respectfully submit that he is wrong. It cannot possibly be so read. It is a right or privilege in respect of "Denominational Schools," and not a system of *Denominational Schools* which is spoken of. Such a right might exist, to be asserted under certain conditions, and yet no *system* of Denominational Schools be established by the Act itself. If the law gave to the Roman Catholics a right to call into existence Schools exclusively of their own denomination, under certain conditions of time or place or otherwise, then that would be a right or privilege in respect of Denominational Schools, which they possessed under the law, even although they had never exerted it. The *right* would be the same, whether exerted or not, and even if no opportunity had occurred for availing themselves of it.

The right the Roman Catholics had under the Act of 1858, and the 6th section of that Act provides for the election of Trustees of Schools, and for the division of their respective Parishes "into convenient School Districts." It requires them to "give any licensed Teacher authority, in writing, to open a School in a district where the inhabitants have provided a sufficient School House, secured the necessary salary, and with their assent agree with such Teacher." It empowers the Trustees to "suspend or displace any teacher" for improper conduct, &c., and directs them, in such case, "to transmit a copy of their proceedings for the decision of the Board." It requires them to call a meeting of the *Rate-Payers of the District*, for the purpose of electing a School Committee; and in towns or populous districts, the Trustees may authorize "*such number of Schools as the wants of the population*" may require. The 7th section provides for the election of the School Committee by the Rate-Payers of the School District, and it gives this Committee, when elected, the immediate charge of the School House, the control of the Library, and of the appropriation of moneys raised in the district for the purpose of providing a Library, subject, of course, to the provisions of the 8th paragraph of the 4th section, which excludes works of a licentious, vicious, or immoral tendency, or hostile to the Christian religion, and works on controversial (but not dogmatic) theology."

In many parts of this Province, as your Lordship is well aware, the Roman Catholics largely preponderate, and in some they constitute the entire population. In the latter places they elected Trustees and School Committees, "provided sufficient School Houses," "secured the necessary salary," and employed Teachers. In such places, Trustees, Committees, Teachers, Parents and Pupils were all Roman Catholics, the Douay Bible alone was used, and the religious books and Acts of Devotion were generally the same as those employed in the Separate Schools in Upper Canada and in the Schools (not Dissident) of Lower Canada. These Schools were established and were lawfully in existence at the time of the Union, under the Act of 1858; the Teachers in them were appointed, and made their returns under the Act, and they received their share of the Provincial Allowance under it.

Again, "in towns and populous places" the Trustees had established schools which were exclusively Roman Catholic, and they had done so strictly in accordance with the provisions of the law, which empowered them in such cases to establish "*such number of Schools as the wants of the population might require*." All these Schools were established and governed in every respect in accordance with the provisions of the Act of 1858, and they were returned by the Superintendent of Education in his Annual Report, as Parish, or more appropriately, Common Schools. In one instance, a Teacher of a School of this kind was dismissed by the Trustees, under the 6th section, for improper conduct, and his dismissal having been duly reported was approved of by the Board of Education; the improper conduct being a refusal to use the Roman Catholic Catechism in his School.

By the return of the Superintendent of Education for the year 1870, there were 825 Common Schools or Parish Schools in the Province, receiving the Provincial Allowance under the Act of 1858, and of that number so returned by him, upwards of 250 were exclusively Roman Catholic.

The right thus to establish Schools composed exclusively of Roman Catholic children, in localities where the population is composed exclusively of that denomination; the power given to the Trustees to establish them in populous districts; the protection afforded to the conscientious scruples of the minority in mixed Schools, were all "rights and privileges" in respect of Denominational Schools which the Roman Catholics of this Province had, as a class, by law at the time of the Union.

It has been urged by some of the advocates of "the Common Schools Act, 1871," (but certainly not by the Minister of Justice,) that the Denominational rights and privileges mentioned in the first sub-section, refer only to such corporate privileges as have been conferred upon Institutions like the Wesleyan Academy at Sackville, the Acadia College in Nova Scotia, or the McGill College in Montreal, belonging respectively to the Wesleyan, Baptist and the Presbyterian Denominations. This argument does not commend itself to our minds as of any weight. The institutions referred to are not Common

Schools in any sense of the term. They confer degrees, they have courses of lectures, and their whole system of teaching is different. The Act of the Imperial Parliament, 31 and 32 Victoria cap. 118, makes provisions for the good government and extension of certain public Schools in England, and it was deemed necessary, in order to include Eton and Winchester Colleges, specially to name them.

The Dartmouth College case, 4 Wheaton, U. S. Reports, is an authority to the effect that Corporations of such a character as these form no part of the General Educational or Common School system of the country. Whatever aid they received from the Province, moreover, was in the shape of Annual Grants, to which they had no vested rights, and which the Legislature might at any time refuse to make. And it was not the different Protestant denominations which were referred to at all. There is nothing in the context of the British North America Act, 1867, to give the slightest color of support to such an argument. Christians, in the 93d section, are divided into two great classes, the same into which all Christendom has been divided for centuries, the Roman Catholic and Protestant. The manifest design of the section is in accordance with all modern British Legislation—to protect the minority from the encroachments of the majority.

The same division of classes is to be found in the 8th section of the Act of 1858. It is the Protestant Bible on the one hand, and the Douay Version on the other. It is not Methodist, or Baptist, or Presbyterian. Therefore, whether we construe the first sub-section by the context by the light of contemporary legislation, or by the circumstances and position of affairs in the Province, to which the law was to be applied, the conclusion is the same—the Roman Catholics and the Protestants are the only classes of persons before the mind of the Legislature.

The “Common Schools Act, 1871,” repeals the Act of 1858, and thereby deprives Roman Catholics not only of the right which that Act secured to them of having the Douay Bible read by their children in the mixed Schools, but also the privilege which they had under it of creating Schools of a character exclusively Roman Catholic, where the population was entirely Roman Catholic, and deprives the Trustees of the authority which they formerly had of establishing Roman Catholic Schools in populous places. The 60th section of the Act of 1871 enacts, that “all Schools conducted under the provisions of this Act shall be non-sectarian.” This emphatically prevents the use of the Douay Bible or of the Catholic Catechism or of religious books, or the performance of any acts of devotion. By the 58th section, sub-section 12, it is enacted that “*no public funds shall be granted in support of any School, unless the same be a Free School, and conducted in every respect in conformity with this Act, and the Regulations of the Board of Education;*” and this deprives Roman Catholics of the Provincial allowance which was secured to them by the Act of 1858, when they complied with its conditions. Moreover, it is under the provisions of the Act of 1871 that the Board of Education derives the authority to make, and that it has made, the following regulation:—“Regulation 20:—*Symbols or Emblems in the School Room.* Symbols or Emblems, distinctive of any National or other Society, political party or religious organization, shall not be exhibited or employed in the School Room, either in its general arrangement or exercises, or on the person of any Teacher or Pupil.”

So long as the Act of 1858 continued to be law, the Board would not have dared to promulgate such a regulation. Catholics were secured against any such outrage by that Act. The Board, moreover, had no power under the Act of 1858 even to *prescribe* the books to be used in Schools. We are, therefore, constrained to say that, in our opinion, the “Common Schools Act, 1871,” does “*prejudicially affect*” rights and privileges which were secured to the Roman Catholics of this Province, as a class, in respect of Denominational Schools.

We observe that Mr. Colby's Resolution and the Report of the Honorable the Minister of Justice both contemplate taking the opinion of the Law Officers of the Crown in the matter, and, if possible, the opinion of the Judicial Committee of the Privy Council. In a matter involving a great constitutional question, and affecting the whole Roman Catholic population of the Province, Your Lordship will not, of course,

allow their rights to be concluded or compromised by assenting to take the opinion of the Law Officers of the Crown as conclusive. However high the professional standing and ability of these gentlemen may be, nothing less than the opinion of the highest judicial tribunal in the country can settle such a question. And we assume that the Canadian Government are disposed to afford the Roman Catholics of the Province every facility for the settlement of the question, so far as it can be disposed of by any Judicial Tribunal; and if they are so disposed, we think that the opinion of the Judicial Committee can be obtained. If the Report of the Minister of Justice, together with the statements of all parties, are forwarded to the Right Hon. the Secretary of State for the Colonies, through His Excellency the Governor General, accompanied by a request that the Secretary of State will lay the whole matter before the Judicial Committee to advise Her Majesty thereon, we think that the opinion of the Committee can be obtained.

Her Majesty has at all times the right to require the advice of Her Privy Council, and the Judicial Committee are a portion of that Council.

That Committee was established under the Act 3rd and 4th William IV., c. 41. The 3rd section of that Act gives the Committee, certain appellate jurisdiction in legal matters; and the 4th section is as follows:—"And be it further enacted, that it shall be lawful for His Majesty to refer to the said Judicial Committee, for hearing or consideration, *any such other matter whatsoever as His Majesty shall think fit*, and such Committee shall thereupon hear and consider the same, and shall *advise His Majesty thereon in manner aforesaid*."

Under the 3rd section, the Committee exercise appellate jurisdiction; under the 4th they will advise Her Majesty on any matter she shall "think fit to refer" to them; and this last section has been acted upon in a great variety of cases when the Committee were not sitting as a Court of Appeal at all.

Amongst the matters so referred by Her Majesty to the Committee for their advice we may refer to the following:—

In re the States of Jersey, 11 Moore's, P. C. C. 320. This was a petition from Philip Gibaut, Esq., Constable of St. John, and 1497 rate-payers and other inhabitants in the different parishes in the Island of Jersey, against an Acte of the States, dated 30th April, 1857.

One objection to the Acte in question arose under an Order in Council of 28th March, 1771, whereby it was ordered, "That when anything is proposed to the Assembly of the States, it shall be wrote down in the form in which it is meant to be passed, and then it shall be debated; after which it must be lodged, *au Greffe*, for 14 days at least, before it shall be determined, in order that every individual of the States may have full time to consider thereof, and the Constables to consult their constituents, if they judge necessary.

The requirements of this law had not been complied with. The Acte in question had not been lodged *au Greffe* for fourteen days.

The Judicial Committee advised Her Majesty that the objection was fatal to the Acte, and it was disallowed.

Ramsay *vs.* The Justices of Sierra Leone.—3 Moore's P. C., 47, was a petition presented by Ramsay to the Judicial Committee, praying for leave to appeal from certain orders of the Recorder's Court of Sierra Leone, imposing fines on the petitioner for contempt of Court. The Court held that they had no jurisdiction to entertain a petition impugning the propriety of such orders; but they say, "In the circumstances disclosed by this petition, if Her Majesty's Secretary of State thinks fit to refer the matter to us, we will hear it, and advise Her Majesty upon the case." Acting upon this intimation, the *appellant presented a similar petition to Her Majesty through the Colonial Office*, setting forth the same facts, and praying that such petition might be referred to the Judicial Committee.

The matter was specially referred by the Colonial Office for the consideration of the Judicial Committee to advise the Crown. The Judges of the Court, whose orders were appealed against, were served with a copy of the petition, and filed their answer.

Affidavits were filed on both sides in support of the respective cases. Counsel were heard on both sides, and the Judicial Committee advised Her Majesty to reduce the fines.

In re Stronach, 2 Moore's, P. C. C. 311 (1833). This was a petition for leave to appeal against an order made by the Chief Justice of the Supreme Court of the Island of Grenada, in relation to the slaves on a certain estate, called the Grand Ance. The Colonial Act, No. 250, made in pursuance of the Slave Abolition Act, 3 and 4 William IV., c. 73, made the jurisdiction of the Chief Justice of the Supreme Court final and conclusive in such a matter. The Judicial Committee held that no appeal would lie from the order of the Chief Justice, and said,—“ We think the only course is for the petitioner to present a petition to the Crown through the Secretary of State, *and then it can be referred to us generally* for our opinion. We have no jurisdiction, as it stands.”

In re the Island of Cape Breton, 5 Moore's, P. C. C., p. 259.

“ This was a petition from certain inhabitants of the Island of Cape Breton against the annexation of that Island to Nova Scotia. The object of the petition was to obtain restoration of the Constitution, alleged to have been granted by His Majesty King George III., in 1784, and for the convening of a Local Legislature, under a Lieutenant-Governor, Council, and Assembly; conformably to such grant, and that the laws of Nova Scotia and the authority of its Legislature might no longer be enforced over the Island of Cape Breton.”

This Petition prayed, amongst other things, that the Constitution of 1784 should be restored to them, and for the convening of their Local Legislature under a Lieutenant Governor, Council, and Assembly; but that, if there should possibly exist any doubt of the petitioners' strict legal and constitutional rights, they further prayed that, as a matter of expediency and to protect the interests of the inhabitants of the Island, and in consideration of the injuries inflicted upon them by the annexation, His Majesty would be pleased, in the exercise of his prerogative, to grant as an act of great favour the separation of Cape Breton from Nova Scotia, and to permit the Island to enjoy a similar Constitution to that of its sister Island of Prince Edward, &c.

The petition was referred by Her Majesty to the Judicial Committee of the Privy Council with directions that the petitioners should be confined in their argument before that Tribunal to the bare question raised by them, and were not to be permitted to enter into any question of public convenience or policy. Notice was required to be given, of the petition having been so referred, to the Legislative Council and House of Assembly of Nova Scotia, who were authorised, if they thought fit, to appoint Counsel to appear on their behalf and oppose the claim of the petitioners.

The Legislature of Nova Scotia, having been specially summoned by the Lieutenant Governor in consequence of such notice having been given, declined to appoint an Agent or to instruct Counsel to represent them at the Bar of the Judicial Committee, expressing their confidence in the learning and ability of the Officers of the Crown, and the integrity and wisdom of the Eminent Tribunal, before whom these Officers were to vindicate the legality of the annexation. They accordingly put in no Case, nor did they appear by Counsel.

The petitioners having been so directed, lodged a case in which they set forth the facts, as stated at length in the report, 5 Moore, together with a summary of the Constitution of the Colony, and referred to a variety of precedents and authorities from which they contended that the annexation, in 1820, of Cape Breton to Nova Scotia, and the Legislative authority of that Province over the Island ought to be adjudged illegal for reasons set forth in their case as stated in the Report in Moore.

A case was also put in on the part of the Crown, wherein it was submitted that the re-annexation of the Island to Nova Scotia was, in the circumstances, strictly legal for reasons also therein set forth.

Counsel was then heard before the Judicial Committee on behalf of the petitioners, and also on the part of the Crown.

No Judgment was delivered on the petition, but the report of their Lordships which was afterwards confirmed by Her Majesty in Council was as follows :—

"The Lords of the Committee in obedience to your Majesty's said order of reference, have taken the said petition into consideration and have heard Counsel on behalf of the said petitioners, and have likewise heard Your Majesty's Attorney General on behalf of Your Majesty's Crown, and their Lordships understanding it to be Your Majesty's pleasure that their Lordships consideration of the matter referred to them, by Your Majesty's said order of reference, should be confined to the question whether the inhabitants of Cape Breton are by law entitled to the Constitution purporting to be granted to them by the Letters patent of 1784 mentioned in the said petition, do agree humbly to report their opinion to Your Majesty that the inhabitants of Cape Breton are not so entitled."

In addition to these the cases *in re* Pollard, Law Reports 2 P., C. 106, and *in re* Ramsey, Law Reports, 3 P., C. 427, were questions referred to the Committee by Her Majesty, under the fourth section of the Acts.

In conclusion, we advise your Lordship to submit these remarks upon the Report of the Honorable the Minister of Justice, with a respectful request that they should be forwarded by His Excellency, together with that Report to the Right Honorable the Secretary of State for the Colonies, for the advice of the Judicial Committee of the Privy Council, under the 4th section of 3 and 4 William IV., cap. 41; and as in the case of the Island of Cape Breton above referred to, the Committee will, no doubt, afford your Lordship an opportunity of substantiating your case by affidavits or otherwise, and of being heard by Counsel before them.

We think also that the Acts of Upper and Lower Canada, which establish the system of Separate and Dissident Schools in those Provinces respectively, and the Acts of Nova Scotia in relation to Education in that Province, should be brought under the notice of the Judicial Committee as well as our Acts of 1858 and 1871.

By collating the Laws on the subject of Common School Education in all the Provinces in existence at the time of the Union, the application of the language of the first sub-section of section 93 of the British North America Act to the Common Schools of this Province at that time, will become very apparent.

We have the honor to be,

Your Lordship's obedient servants,

CHARLES DUFF,
CHARLES W. WELDON.

CATHOLIC "PARISH" SCHOOLS IN NEW BRUNSWICK.

New Brunswick is divided into two Catholic Dioceses: the Diocese of St. John and the Diocese of Chatham.

The Diocese of St. John comprises the City and County of St. John, King's and Queen's Counties, the Counties of Sunbury, York, Carleton, Charlotte, Albert and Westmoreland, and part of Kent; the Diocese of Chatham comprises the Counties of Victoria, Restigouche, Gloucester, Northumberland, and part of Kent.

DIocese of St. John.

In the Diocese of St. John there were on July 1st, 1867, and up to the time when the School Act of 1871 went into operation, as there had been for many years previously, one hundred and sixty Schools established under the School Act of 1858, in which the Teachers were Catholics, and in nearly all of which the pupils were also entirely Catholics, the great majority being Catholics in those in which the pupils were not exclusively Catholics. In these Schools the Catholic Catechism was regularly taught, Catholic Prayers were taught and were said every day, and Catholic Books were used with the knowledge and approbation of the Trustees, elected by the people of the several parishes, of the Inspectors appointed by the Board of Education to visit the Schools periodically, and in some instances, with the knowledge and approval of the Superintendent of

Education who occasionally visited some of these Schools. In several cases also, the Returns made by the Teachers to the office of the Chief Superintendent showed that books manifestly Catholic were used in these Schools, and in no instance was any objection ever made to the use of such books, or to the teaching of the Catholic Catechism, or to the saying of Catholic Prayers during school hours.

The following is a detailed account of the Catholic Parish Schools established under the law of 1858, which were in existence when the School Act of 1871 came into operation, and which existed for many years previously :—

CITY AND COUNTY OF ST. JOHN.

In the City of St. John	9
„ the Parish of Simonds	6
„ the Parish of Portland	6
„ Lancaster	8
„ St. Martins	2

IN KING'S COUNTY.....8.

QUEEN'S COUNTY.

In Petersville.....	4
„ Enniskillen	1
At Grand Lake	1

IN SUNBURY COUNTY.....2.

YORK COUNTY.

In Fredericton	4
„ other parts of the County	10

CARLETON COUNTY.

In Woodstock	4
„ Richmond.....	6
„ Williamstown	2
„ Simonds	1
„ Northampton	1
„ Canterbury	2
„ Johnville	3

CHARLOTTE COUNTY.

In St. Stephens	3
„ St. Andrews	3
„ Bocabec	1
„ St. George	4

IN ALBERT COUNTY.....4.

WESTMORELAND.

In Shediac—Barachois	8
„ Tedish	2
„ Botsford	6
„ Dorchester.....	11
„ Moncton	4
„ Scoudac	3

PART OF KENT.

In Dundas	11
„ Wellington (Buctouche)	8
„ St. Mary's „	5
„ Richibucto.....	4
„ Welsford	2

All these Schools receive the Provincial Allowance, according to the grade of the Teachers, as fixed by the law of 1858, and in all of them Catholic doctrines were regularly taught, and Catholic devotions regularly practiced. Several of the Schools were French, and in these the School Books used were generally those approved of by the Quebec Board of Education, which are for the greater part essentially Catholic, and the books “Le Nouveau Traité du Devoir du Chrétien,” “Doctrine Chrétienne,” “Histoire Sainte,” “L'Ancien et le Nouveau Testaments,” were in general use; in the Schools in which the instruction was given in English, books of the same character were in use. The priests of the districts frequently visited some of these Schools and gave religious instructions in them.

In Carleton, St. John, two and sometimes as many as four Licensed Teachers were employed in the Catholic School. These received the usual Provincial Allowance from the Board of Education as Parish School Teachers, duly employed. To this School the Provincial Legislature made also a grant of \$240 a year for many years, to enable the manager to pay other Teachers; and in the list of legislative appropriations in the Journals of the House of Assembly it was always called the Roman Catholic School, Carleton.

The subjoined certificate from the gentlemen who acted as Trustees for the City of Saint John under the old School Law, shows that in carrying out that law they always had regard to what they considered the legal rights of the several denominations under that law. They are all Protestants. Mr. Sears and Mr. Blatch were Trustees for about twenty years, and Mr. Dole for at least thirteen years.

“Under the old School Law, the Trustees in St. John (Parish No. 1), always considered, in appointing Roman Catholic Teachers to Schools, that such Schools were essentially denominational; and hence the Trustees in making such appointments, always took into consideration the relative claims of the various denominations, (viz.:—Episcopal, Roman Catholic, Wesleyan, Presbyterian, and Baptist), in proportion to the whole number of Schools and the population, so as to apportion the number of Teachers as fairly as possible among the denominations.

JOHN SEARS,
GEORGE BLATCH,
W. P. DOLE.”

DIOCESE OF CHATHAM.

It has been found impossible to obtain complete returns from this Diocese. Those which have been received show that:—

In the County of Restigouche there were at least two Schools, one in the Parish of Durham and one at Eel River, in which Catholic Teachers taught Catholic Devotions and Catholic Prayers to Catholic pupils for a number of years.

GLOUCESTER COUNTY.

In the Parish of Beresford there were four Catholic Parish Schools, in which the pupils were regularly taught the Catholic Catechism and Catholic Prayers, and in which Catholic Books were used.

In the Parish of New Brandon there were three Catholic Parish Schools in which the Catholic Catechism was taught, and Catholic Prayers were said, and Catholic Books were used.

In the Parish of Caraquet there were eight Catholic Parish Schools in which the Catholic Catechism was taught, Catholic Prayers were said every day, and such books as "Le Nouveau Traité du Devoir du Chrétien," "Doctrine Chrétienne," "Histoire Sainte," "L'Ancien et le Nouveau Testaments," were used with the knowledge of the Trustees, and of the Inspector appointed by the Board of Education.

No returns have been received from the Parish of Bathurst or from the Parishes of Inkerman, Saumarez and Shippegan, which are almost exclusively Catholic, and in which there were several Catholic Schools.

VICTORIA COUNTY.

In the Parish of St. Basil there were five Parish Schools in which Teachers and pupils were Catholics, and in which the Catholic Catechism was taught, Catholic Prayers were regularly said, and Catholic Books were used. In Madawaska there were six Parish Schools of the same character, and at Grand Falls there were two.

KENT COUNTY.

In the Parish of St. Louis, which belongs to the Diocese of Chatham, at least eight Catholic Parish Schools existed for many years before the passing of the late Act. These Schools were regularly opened and closed with prayer, the Catholic Catechism was regularly taught in them, and the books used were Catholic, including the "Nouveau Traité des Devoirs du Chrétien," and "La Bible Illustrée." They were visited regularly by the Government Inspector; and in the returns sent to the Chief Superintendent of Education the names of the books used were given.

NORTHUMBERLAND COUNTY.

The returns from this County are incomplete. In the Parish of Blackville there were three Catholic Parish Schools in which the Catholic Catechism was taught, Catholic Prayers were regularly said, and Catholic Books were used.

In Douglastown four Catholic Parish Schools were taught for several years. In these the Teachers and nearly all the children were Catholics. The Catholic Catechism was taught, Catholic Prayers were said and Catholic Books were used. The Teachers were examined by the Board of Education, and received the regular Provincial allowance.

The following certificate from the gentlemen who acted as Trustees of the Schools in the Town and Parish of Chatham for a number of years, shows that as in the City of St. John, the right of the several denominations to establish, under the law of 1858, Schools in which denominational religious instruction would be given, was practically recognised. These gentlemen, except Mr. Lawlor, are all Protestants.

"We, the undersigned, who have for several years fulfilled the office of Trustees of Schools in the Parish of Chatham, County of Northumberland, under the School law of 1858, certify that of the various schools in operation in this Parish during the existence of said law (from 1858 to 1871), several were known to be professedly and in practice, '*Denominational Schools*;' that is, under the patronage of one or other of the different Religious Denominations of Christians. In these schools besides the secular and moral education required by law, the peculiar religious instruction (by catechism, prayers, hymns, &c,) according to the tenets and usages of their respective Churches, was known to be imparted in their regular daily exercise.

"The Schools under the patronage of Roman Catholics, kept in Schoolhouses belonging to that body, attended by pupils almost exclusively Catholic, numbering from 250 to 300, and conducted by licensed teachers of the same creed:—namely, Annie Quinlan, Sarah Wymand Bridget Flannagan, during all the above mentioned time—and Mary Harrington and Margaret McCarthy for a shorter period—and Thomas Caulfield and other Teachers of St. Michael's Male Academy, from 1861 to 1871 inclusively, were all conducted under the then existing law, by the above named licensed Teachers, were regularly visited

by the Inspectors, Woods, Morrison, &c., and Chief Superintendent Bennet and other officials, and received their regular portion of Government allowance from the Provincial School Fund, through the Board of Education.

THOS. F. GILLESPIE, M.P.P.
J. C. GOUGH, M.P.P.
JAS. J. PIERCE.
WM. LAWLOR.
W. WILKINSON.
R. CARMAN."

In the Diocese of Chatham the total number of Catholic Schools must have been at least one hundred. In all of these the Education was in every respect thoroughly Catholic; and they were recognised by the Board of Education—Composed of the Members of the Provincial Council and the Chief Superintendent of Education—as Catholic Schools, to all intents and purposes. So much was this the case, that in April, 1871, when Mr. Turgeon was appointed Principal of the Superior School in the Parish of Beresford, and the Inspector, Mr. Morrison, employed as his assistant a Protestant Teacher, on Mr. Turgeon remonstrating with the Inspector, and satisfying him that the assistant should be a Catholic, who could properly give religious instructions to the Catholic pupils, Mr. Morrison immediately cancelled the agreement he had made with the Protestant teacher, and a Catholic assistant was employed. In some instances a few Protestant children attended the Schools—as in Caraquet, where there were eight Schools, five or six Protestant children attended,—but this did not in any way alter the character of the Schools. The conscientious rights of those Protestant children were sacredly regarded, as the laws of 1858 prescribed, but the Catholic children received religious instruction, and said their prayers precisely as if no Protestant children were at the Schools. The Teachers were duly licensed and received the Provincial allowance fixed by law, and the schools were what the law called Parish Schools, and belonged to the regular Provincial School Establishment; but they were not, in any sense, Separate, as are the Catholic Schools of Ontario, or Dissident, as are the Protestant Schools of Quebec; they were thoroughly and unquestionable Denominational Schools.

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 28th January, 1873.

MY LORD,—I am directed to acknowledge the receipt of Your Lordship's letter of the 18th instant, forwarding therein printed papers containing the opinion of Charles Duff and C. W. Weldon, Esquires, regarding the School Law of New Brunswick, lately passed by the Local Legislature, &c., &c., and to inform Your Lordship that the same have been referred to the Privy Council for consideration.

I have the honor to be, My Lord,

Your most obedient servant,

E. PARENT,
Under Secretary of State.

The Right Reverend John Sweeny, D. D.,
Bishop of St. John, New Brunswick.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 30th January, 1873.

On a letter, dated 18th January, 1873, from His Lordship the Right Reverend the R. C. Bishop of St. John, N. B., enclosing printed papers, one of them containing the opinions of two legal gentlemen, Messrs. Duff and Weldon, regarding the late School Law of New Brunswick, in order that the same may be transmitted to England; and

requesting to be informed, if possible, of the time when this question, so important to the Catholics of New Brunswick, will be brought before the Judicial Committee of Her Majesty's Privy Council, in order that they may have an opportunity of employing Counsel in England to represent them.

The Honorable the Minister of Justice, to whom the above letter has been referred, recommends that a copy of such letter, with the documents annexed thereto, be transmitted by Your Excellency to the Right Honorable the Secretary of State for the Colonies, to be placed with the papers heretofore transmitted on the same subject, and to be taken into consideration at the same time.

The Committee submit the above recommendation for Your Excellency's approval.

Certified.

W. A. HIMSWORTH,
Clerk, Privy Council.

To the Honorable,
The Secretary of State, &c., &c., &c.,

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 4th February, 1873.

MY LORD,—I am directed to inform your Lordship that your letter of the 18th January last, enclosing printed papers, one of them containing the opinion of two legal gentlemen, Messrs. Duff & Weldon, regarding the late School Law of New Brunswick, in order that the same may be transmitted to England, and requesting to be informed, if possible, of the time when this question, so important to the Catholics of New Brunswick, will be brought before the Judicial Committee of Her Majesty's Privy Council, in order that they may have an opportunity of employing Counsel in England to represent them, having been referred to His Excellency the Governor General in Council, an Order in Council has been passed, directing that a copy of your Lordship's said letter with the documents annexed thereto, be transmitted by His Excellency to the Right Honorable the Secretary of State for the Colonies, to be placed with the papers heretofore transmitted on the same subject, and to be taken into consideration at the same time.

I have the honor to be, My Lord,

Your most obedient servant,

E. PARENT,
Under Secretary of State.

The Right Reverend John Sweeny, D. D.,
Bishop of St. John, St. John, New Brunswick.

The Secretary of State for the Colonies to the Governor General.

(Copy.—Canada,—No 47.)

DOWNING STREET,
February 18th, 1873.

MY LORD,—I referred to the Law Officers of the Crown, and to the Privy Council Office, your despatches, No. 85, of the 6th of November, 1872; and No. 7, of the 13th of January last, together with the papers which accompanied them, relating to the Act passed by the Provincial Legislature of New Brunswick in May, 1871, relating to Common Schools. I transmit to you for your information, and for that of your Government, copies of the opinion which have been given by the Law Officers on this case; and also, copy of Council Office, 13th Dec., 1872, a letter from the Privy Council Office on the subject.

L. O., Nov. 29th 1872.

Law Offices, 12th Feb., 1873.

From the letter you will learn that the case is not one which can be properly submitted to the Judicial Committee of the Privy Council.

I have, &c.,

(Signed,)

KIMBERLEY.

Governor General,

The Right Honorable

The EARL OF DUFFERIN, K. P., K. C. B.

&c., &c., &c.

The Law Officers of the Crown to the Earl of Kimberley.

(Copy.)

TEMPLE, November 29th, 1872.

MY LORD,—We are honored with Your Lordship's commands, signified in Mr. Holland's letter of the 25th November instant, stating that he was directed by Your Lordship No. 85, Nov. 6th, '72. ship to transmit to us a copy of a Despatch from the Governor General of * Sec. in original. Canada, with enclosures relating to an Act passed by the Provisional (*) Legislature of New Brunswick, in May, 1871, relating to Common Schools, and to request that we would take the papers into our consideration and favor Your Lordship with our opinion thereon.

In obedience to Your Lordship's commands we have the honor to report :—

That we agree substantially with the opinion expressed by the Minister of Justice of the Dominion, so far as appears from the papers before us, whatever may have been the practical working of annual Education Grants in the Province of New Brunswick, the Roman Catholics of that Province had no such rights, privileges, or schools as are the subjects of enactment in the British North America Act, 1867, Section 93, Sub-section, *et seqr.*

It is of course quite possible that the new Statute of the Province may work in practice unfavorably to this or that denomination therein, and therefore to the Roman Catholics, but we do not think that such a state of things is enough to bring into operation the restraining powers or the powers of appeal to the Governor General in Council, and the powers of remedial Legislation in the Parliament of the Dominion contained in the 93 Section. We agree, therefore, in the practical conclusion arrived at by Sir John A. Macdonald.

We have &c.,

(Signed,)

J. D. COLERIDGE,

G. JESSEL.

The Right Honorable

The Earl of Kimberley, &c., &c., &c.

The Law Officers to Lord Kimberley.

(Copy.)

TEMPLE, 12th February, 1873.

MY LORD,—We are honored with Your Lordship's commands, signified in Mr. Holland's letter of the 11th inst., stating, that with reference to the Report furnished by us on the 29th November, respecting an Act passed by the Legislature of New Brunswick in May, 1871, relating to Common Schools, he was directed by Your Lordship to transmit to us a copy of a further despatch from the Governor General of Canada, forwarding a memorandum of the Executive Council of New Brunswick on the Resolution adopted by the House of Commons of the Dominion on the 30th May last.

And that he was to request us to take the documents into consideration, and inform Your Lordship whether we saw any reason to change the opinion expressed in our Report of the 29th November.

In obedience to Your Lordship's commands we have the honor to report, that we see no reason to alter or modify the opinion which we have already submitted to Your Lordship on this subject.

We have, &c.,
(Signed,)

J. D. COLERIDGE,
G. JESSEL.

The Right Honorable
The Earl of Kimberley.

Mr. Reeve to Mr. Holland.

(Copy.)

PRIVY COUNCIL OFFICE, 13th December, 1872.

SIR,—I have submitted to the Lord President of the Council your letter of the 9th inst., transmitting a Copy of a Despatch from the Governor General of Canada with enclosures, respecting an Act passed by the Provincial Legislature of New Brunswick with reference to Common Schools, and requesting to know whether the opinion of the Lords of the Judicial Committee of the Privy Council on this question can properly be obtained.

It appears to His Lordship that as the power of confirming or disallowing Provincial Acts is vested by the Statute in the Governor General of the Dominion of Canada, acting under the advice of his constitutional advisers, there is nothing in this case which gives to Her Majesty in Council any jurisdiction over this question ; though it is conceivable that the effect and validity of this Act may at some future time be brought before Her Majesty on an appeal from the Canadian Courts of Justice.

This being the fact, His Lordship is of opinion that Her Majesty cannot with propriety be advised to refer to a Committee of Council in England a question which Her Majesty in Council has at present no authority to determine, and on which the opinion of the Privy Council would not be binding on the parties in the Dominion of Canada.

I have &c.,
(Signed,)

HENRY REEVE,
Reg. P.C.

Henry T. Holland, Esq., &c., &c., &c.

The Secretary of State for the Colonies to the Governor General.

(Copy.—Canada—No. 54.)

DOWNING STREET, 20th February, 1873.

MY LORD,—I have the honor to acknowledge the receipt of your Lordship's Despatch, No. 35, of the 1st February, inclosing Copy of a further Report of a Committee of the Canadian Privy Council, and of a letter with printed papers from the Roman Catholic Bishop of St. John, relating to the New Brunswick School Act.

In my Despatch, No. 47, of the 18th inst., I have forwarded to you Copies of the opinions of the Law Officers of the Crown in reference to this case ; as the Law Officers have had this subject twice under their consideration, and as the matter is not one which can properly be referred to the Judicial Committee of the Privy Council, I do not propose to submit to the Law Officers the papers enclosed in your Despatch now under acknowledgment, unless it is desired by the Canadian Government.

I have &c.,
(Signed,)

KIMBERLEY.

Governor General,
The Right Honorable
The Earl of Dufferin, K.P. K.C.B.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 13th March, 1873.

The Committee of Council have had under consideration the Despatch from the Right Hon. H. M. Secretary of State for the Colonies, No. 54, dated 20th February, 1873, relating to the Act passed by the Provincial Legislature of New Brunswick, in May, 1871, relating to Common Schools.

The Hon. the Minister of Justice, to whom the above Despatch and its enclosures were referred, reports, that it appears from this, and from previous Despatches, that the Resolution adopted by the House of Commons of Canada, at its last Session, asking for the opinion of the Law Officers of the Crown in England, as to the competence of the Legislature of New Brunswick to pass the Common School Act of New Brunswick, of 1871, together with the Minute of the Executive Council of New Brunswick, was submitted by Her Majesty's Government to the Attorney and Solicitor General of England ;

That on this reference the Law Officers have given their opinion that the Provincial Legislature was competent to pass the Act in question.

That this opinion was given before the arrival in England of the letter and accompanying documents transmitted by the Roman Catholic Bishop of St. John, relating to the New Brunswick Act.

That it is to be regretted that the delay in the preparation of the memorandum by the Bishop prevented his letter being before the Law Officers at the time they had the question under consideration.

That as the Right Reverend Prelate, however, speaks on behalf of the Roman Catholic people who complain of the Act in question, and dispute its validity, it seems to him, the Minister of Justice, advisable that the Attorney and Solicitor General should be requested to re-consider the whole case, after having before them all the papers transmitted by Your Excellency on the three several occasions, viz :—The Resolution of the House of Commons ; the memorandum of the Executive Council of New Brunswick ; and the letter and papers transmitted by the Bishop of St. John.

That without such reconsideration, the Roman Catholic body might feel that the opinion had been given without their case being submitted or considered, and it would not therefore have the weight with them that is desirable.

The Committee concur in the foregoing Report, and advise that a copy of this Minute be transmitted by Your Excellency to the Earl of Kimberley.

Certified.

WM. HIMSWORTH,
Clerk, Privy Council.

To the Honorable

The Secretary of State for the Provinces.

RETURN

To an Address of the HOUSE OF COMMONS, dated 14th March, 1873 ; For Copies of all documents produced, records and judgments in a case *ex parte* Renaud, in which judgment was rendered by the Supreme Court of New Brunswick, on the 12th February last, respecting the constitutionality of the Act respecting Common Schools in New Brunswick, passed by the Legislature of that Province in 1871.

By command.

J. C. AIKINS,

Secretary of State.

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 18th March, 1873.

No. 94—141.

OTTAWA, 15th March, 1873.

SIR,—In compliance with your order of reference of this date, I have the honor to transmit to you, herewith, a Copy of the Judgment of the Supreme Court of the Province of New Brunswick, upon the question of the constitutionality of "The Common Schools Act, 1871," in the case of Auguste Renaud and others, called for by the House of Commons in their Address of the 14th inst.

The enclosed document was received this day from the Lieutenant Governor of New Brunswick, in a covering despatch, dated the 10th inst.

I have the honor to be, Sir,

Your obedient Servant,

E. H. MEREDITH,

Under Secretary of State for the Provinces.

E. PARENT, Esquire,
Under Secretary of State for Canada.

JUDGMENT OF THE SUPREME COURT OF NEW BRUNSWICK,

Upon the question of the Constitutionality of "The Common Schools Act, 1871," delivered in Hilary Term, 1873, in the case of AUGUSTE RENAUD and others.

The Chief Justice delivered the following, as the judgment of himself and Justices Allen and Weldon :—

We are asked to set aside the Assessment in this case, on the ground that the Legislature had no power or authority to enact the Law under which such Assessment was levied—The Common Schools Act, 1871—inasmuch as, it is contended, it contravenes 'The British North America Act, 1867,' and is consequently void and of no effect.

We have never doubted that when a Provincial Act and an Imperial Statute are repugnant, so far as such repugnancy extends, but no further, the Provincial Act is void ; and this principle has been, since the passing of "The British North America Act, 1867," on several occasions enunciated and acted on by this Court ; and we should not have thought it necessary now to refer to it, still less to support by authorities the views we have always entertained on this point (without any doubts), were it not that we observe that in the neighboring Province of Quebec the question has been much discussed, and the Court divided in their opinions on the subject, though the majority arrived at the same conclusion as that which has hitherto governed this Court. We have always thought it a constitutional principle, too clear to be seriously questioned, that the subordinate legislative power of a Colonial Legislature must succumb to the supreme legislative power and control of the Parliament of Great Britain, and therefore have heretofore considered it wholly unnecessary to cite any authority ; but as there is a clear statutory recognition, as well as the highest judicial declaration in support of the accuracy of the view we have acted on, we think it as well now to name them. In the Imperial Act 28th and 29th Vic. cap. 63, sec. 2, it is enacted—"That any Colonial Law which is, or shall be, in any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which such Law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the Colony the force and effect of such Act, shall be read, subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative." And sec. 3 says—"No Colonial Law shall be, or be deemed to have been, void or inoperative on the ground of repugnancy to the Law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid." And this Statute has undergone judicial comment in the case of *Phillips vs. Eyre* (Law Rep. 6, Q. B., 20), where Willes, J., in delivering the judgment of the Exch. Ch., in stating the effect of this Statute, after putting forward what has always been considered Law in this Province, viz., that an English statute only binds the Province when it is by the express words of the statute, or by necessary intendment, made clearly applicable to the Province, says—"It was argued that the Act in question (an Act passed by the Legislature of Jamaica) was contrary to the principles of English Law, and therefore void. This," he says, "is a vague expression, and must mean either contrary to some positive Law of England, or to some principal of natural justice, the violation of which would induce the Court to decline giving effect even to the Law of a Foreign Sovereign State. In the former point of view, it is clear that the repugnancy to English Law which avoids a Colonial Act, means repugnancy to an Imperial statute or order made by authority of such statute applicable to the Colony by express words or necessary intendment, and that so far as such repugnancy extends, and no further, the Colonial Act is void."

But long prior to the passing of either the 28th and 29th Vic. cap. 63, or "The British North America Act, 1867," the Judiciary of England authoritatively declared what the Law was on this subject, in answer to a question propounded to the Judges by the House of Lords.

On the fourth day of May, 1840, the Lord Chief Justice of the Court of Common Pleas delivered the unanimous opinion of the Judges (with the exception of Lord Denman and Lord Abinger, who did not attend the meeting of Judges) upon the questions of Law propounded to them, respecting The Clergy Reserves' (Canada) Act. In answer to the question lastly propounded (question 3), which is as follows:—"Whether the Legislative Council and Assembly of the Province of Upper Canada, having, in an Act 'To provide for the sale of the Clergy Reserves, and for the distribution of the proceeds thereof,' enacted that it should be lawful for the Governor, by and with the advice of the Executive Council, to sell, alienate and convey in fee simple, all or any of the said Clergy Reserves ; and having further enacted in the same Act, that the proceeds of past sales of such Reserves which have been or may be invested under the authority of the Act of the Imperial Parliament, passed in the seventh and eighth years of the Reign of His

late Majesty King George the Fourth, intituled 'An Act to authorize the sale of part of the Clergy Reserves in the Provinces of Upper and Lower Canada,' shall be subject to such orders and directions as the Governor in Council shall make and establish, for investing in any securities within the Province of Upper Canada, the amount now funded in England, together with the proceeds hereafter to be received from the sales of all or any of the said Reserves, or any part thereof, did, in making such enactments, or either of them, exceed their lawful authority ;" His Lordship said :—" In answer to the question lastly propounded, we all agree in the opinion, that the Legislative Council and Assembly of the Province of Upper Canada have exceeded their authority in passing the Act 'To provide for the sale of the Clergy Reserves, and for the distribution of the proceeds thereof,' in respect of both the enactments specified in Your Lordship's question. As to the enactment, that it should be lawful for the Governor, by and with the advice of the Executive Council, to sell, alienate and convey in fee simple, all or any of the Clergy Reserves ; we have, in answer to the second question, already stated our opinion to be such, as that it is inconsistent with any such power in the Colonial Legislature ; and as to the enactment 'That the proceeds of all past sales of such Reserves, which have been, or may be, invested under the authority of the Act of the Imperial Parliament, passed in the 7th and 8th George Fourth, for authorizing the sale of part of the Clergy Reserves in the Provinces of Upper and Lower Canada, shall be subject to such orders and directions as the Governor in Council shall make and establish for investing in any securities within the Province of Upper Canada the amount now funded in England, together with the proceeds hereafter to be received from the sales of all or any of the said Reserves ;' we think such enactment is, in its terms inconsistent with and contradictory to the provisions of the statute of the Imperial Parliament, 7th and 8th George Fourth, and therefore void, there being no express authority reserved by that Act to the Colonial Legislature to repeal the provisions of such latter Statute."

Assuming, then, that it is not only the right, but the bounden duty of this Court to deal with questions of this nature when legitimately presented for its consideration, we must endeavour to ascertain whether there is such a repugnancy in this case as will constrain us to declare "The Common Schools Act, 1871," void, in part or in whole.

"By the 93rd section of 'The British North America Act, 1867,' it is enacted, that—
"In each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following provisions :—

"(1) Nothing in any such Law shall prejudicially affect any right or privilege with respect to Denominational schools, which any class of persons have by law in the Province at the Union.

"(2) All the powers, privileges and duties at the Union by law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

"(3) Where, in any Province, a system of Separate or Dissident Schools exists by law at the Union, or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council, from any act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education.

"(4) In case any such Provincial Law, as from time to time, seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council, on any Appeal under this section, is not duly executed by the proper Provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

It is now contended, that the rights and privileges of the Roman Catholic inhabitants of this Province, as a class of persons, have been prejudicially affected by "The Common Schools Act, 1871," contrary to the provisions of sub-section (1) of section 93 of "The British North America Act." We have now to determine whether any class of persons had, by law in this Province, any right or privilege with respect to Denominational schools at the Union, which are prejudicially affected by "The Common Schools Act of 1871." This renders it necessary that we should, with accuracy and precision, ascertain exactly what the state of the law was with reference to Denominational schools, and the rights of classes of persons in respect thereto, at the Union. At that time, what may fairly and legitimately be called the Common School system of the Province, was carried on under an Act passed in the 21st Vic. cap. 9, intituled "An Act relating to Parish Schools." There were, no doubt, at the same time in existence, in addition to the schools established under the Parish School Act, schools of an unquestionably denominational character, belonging to, and under the immediate government and control of particular Denominations, and in which, there can be no doubt, or it may reasonably be inferred, the peculiar doctrines and tenets of the Denominations to which they respectively belonged were exclusively taught, and therefore had, what may rightly be esteemed, all the characteristics of Denominational schools, pure and simple. We do not here refer to Collegiate Institutions, which it has been strongly, and with great force urged, were not within the contemplation of the Imperial Parliament, or intended to be affected by "The British North America Act, 1867;" but we refer to such schools as the Wesleyan Academy, Sackville, as incorporated by the 12th Vic. cap. 65, amended by 19th Vic. cap. 65, a Corporation entirely distinct in Law, as we presume also, in fact, from the College which the Trustees of that Academy are authorized to found and establish under the 21st Vic. cap. 57; an Institution entirely under the control of the Wesleyan denomination, and in which, or in any department thereof, or in any religious services held upon the said premises, it is enacted that no person shall teach, maintain, promulgate or enforce any religious doctrine or practice contrary to what is contained in certain Notes on the New Testament, commonly reputed to be the Notes of the Rev. John Wesley, A.M., and in the first four volumes of Sermons, commonly reputed to have been written and published by him. The Varley School, endowed by the late Mark Varley, who bequeathed certain property "To the Trustees of the Wesleyan Methodist Church of the City of St. John, for the establishment and maintenance of a day School," which devise was confirmed by the 13th Vic. cap. 2, and the property vested in certain persons, viz., the Trustees of said Wesleyan Methodist Church in the City of Saint John, in connection with the British Conference, upon the Trusts, &c., in said Will. The Madras School, which by its Charter is to be conducted according to the system called the Madras system, as improved by Dr. Bell, and in use and practice in the British National Education Society, incorporated and established in England; which National Society, established in 1811, was incorporated in 1817, for promoting the education of the poor in the principles of the Established Church throughout England and Wales; the schools established by such Society being purely denominational, in which the children are to be instructed in the Holy Scriptures, and in the Liturgy and Catechism of the Established Church, and, "with respect to such, instruction the schools are to be subject to the superintendence of the Parochial Clergyman, and the Masters and Mistresses are to be Members of the Church of England." And the Baptist Academy or Seminary—the Roman Catholic School established in the City of Saint John—the Free School in Portland, under the Board of Commissioners of the Roman Catholic School in Saint John—the Roman Catholic School in Fredericton—the Roman Catholic School in Saint Stephen—the Roman Catholic School in Saint Andrews, all of which are recognized by name by the Legislature in various Acts, anterior to the 21st Vic. cap. 9, and received specific annual grants from the Public Provincial Funds, outside the Parish School Act.

In the year 1857, and subsequently thereto, the money intended for educational purposes has been annually granted in a lump sum, viz., so much "to provide for certain educational purposes," not specifying any particular school or purpose, as had been there-

tofore customary. But the Estimates of the Public Expenditure which appear in the Public Journals, shew that appropriations of a similar character have been since annually made. Thus in the year 1867, but before the 1st day of July (the day of the Union), it will be seen by the Journals of the House of Assembly, page 45, that in addition to the amount authorized by Law, the following schools, among others, received special grants, viz. :— The Madras School; the Wesleyan Academy; the Baptist Seminary; the Roman Catholic School, Fredericton; the Presbyterian School, St. Stephen; the Roman Catholic School, St. John; the Varley School, St. John; the Roman Catholic School, Milltown; the Roman Catholic School, St. Andrews, male and female; the Roman Catholic Schools, Carleton, Woodstock, Portland, and Bathurst; the Presbyterian School, Chatham; Roman Catholic School, Newcastle; and the Sackville Academy; and in the Journals for 1871, the year the Common School Law passed, are to be found special appropriations for the above Schools; so that it is obvious there were in existence at the time of the Union, and have been ever since in this Province, apart from Schools established under the Parish School Act, denominational Schools, recognized by the Legislature and aided from the public Revenues. But as it is not contended that the Common School Law prejudicially affects any right or privilege with respect to these Schools, which any class of persons had by Law at the Union, it will be necessary to examine minutely and critically the Parish School Act of 1858, under which it is contended "Rights and Privileges" existed which it is alleged have been so affected. By that Act, the Governor in Council, with a Superintendent appointed by the Governor and Council, constituted the Board of Education; the Province was to be divided into Districts by the Governor and Council, who were to appoint an Inspector for each District; and to the Board of Education was confided the power of making Regulations for the organization, government and discipline of the Parish Schools, and for the examination, classification, and mode of licensing teachers; to appoint examiners of teachers; to grant and cancel licenses, and to hear and determine all appeals from the decision of Trustees; to prescribe the duties of Inspectors of Schools; to apportion all moneys granted by the Legislature for the support of such schools, among the several parishes, in proportion, &c.; and to provide for the establishment, regulation and government of School Libraries, and the selection of Books to be used; but no Books of a licentious, vicious, or immoral tendency, or hostile to the Christian Religion, or Works on Controversial Theology, were to be admitted. To the Superintendent was confided, subject to the order of the Board, the general supervision and direction of the Inspectors, and the enforcement and the giving effect to all the regulations made by the Board; he was to collect information on Education, hold meetings in different parts of the Province, to which he was to invite the attendance of the Inspectors, teachers and inhabitants; to address such meetings on the subject of Education, using all legitimate means to excite an interest therein; to cause Trustees, School Committees, and Teachers, to be furnished with copies of the Regulations of the Board of Education, &c.; to adopt measures to promote the establishment of School Libraries; to provide plans for the construction of School Houses, &c.; with power to sue for Books, &c., purchased for the use of Parish Schools, and for all moneys due on sale thereof; and he was required annually to prepare a Report upon the condition of the Schools and School Libraries, with information upon the system and state of Education generally; the amount expended in promoting it; with suggestions, accompanied with a return of moneys received for the sale of Books, &c., to be laid before the Legislature within ten days after the opening thereof. Provision was then made that three Trustees of Schools should be annually elected in each Town or Parish, at the time and in the same manner as other Town and Parish Officers; who should be subject to the same pains and penalties for neglect or refusal to act, or the non-performance of their duties, as other Town or Parish Officers; and when any Town or Parish failed to elect, the Sessions should appoint as in other cases. In incorporated Towns, Cities, or Counties, the Council were to appoint the Trustees. The duties of the Trustees were pointed out; they were to divide Parishes into convenient School Districts; to give any licensed teacher authority in writing to open a school in a District where the inhabitants had provided a school-house and secured salary, and with their assent to agree

with such teacher ; to suspend or displace teachers for incapacity, &c. They were required immediately after ratifying the engagement of a teacher, and annually thereafter, to call a meeting of the rate-payers of the District, for the purpose of electing a School Committee of three persons ; they were to accompany the Inspector in examination of schools ; they were at least once a year to examine all schools ; to authorize such number of schools in any Town, &c., as the wants of the inhabitants might require ; and if they deemed it necessary, authorize the employment of an Assistant Licensed Teacher in any large school ; to apportion among School Districts any money raised by County or Parish Assessment for support, &c., of schools. The election of a School Committee by the ratepayers was then provided for, and their duties pointed out, viz., to have charge of school-house furniture, &c. ; to call meetings of inhabitants for providing school-house, books, &c. ; to have control of any Library, and appointment of a Librarian, &c. ; to receive and appropriate all money raised in the District for providing a Library, &c. ; to admit free scholars, and children at reduced rates, being children of poor and indigent parents, &c.

The duties and qualifications of Teachers are minutely detailed in section 8. That section is as follows :—

“ 8. The teachers, male and female, shall be divided into three classes, qualified as follows :—

“ Male teachers of the first class, to teach spelling, reading, writing, arithmetic, English grammar, geography, history, book-keeping, geometry, mensuration, land-surveying, navigation, and algebra ; of the second class—spelling, reading, writing, arithmetic, English grammar, geography, history and book-keeping ; of the third class—spelling, reading, writing, and arithmetic.

“ Every teacher of the first and second class, shall be qualified and enjoined to impart to his pupils a knowledge of the geography, history and resources of the Province of New Brunswick, and of the adjoining North American Colonies.

“ Female teachers of the first class to teach spelling, reading, writing, arithmetic, English grammar, geography, history, and common needle-work ; of the second class—spelling, reading, writing, arithmetic, English grammar, geography, and common needle-work ; of the third class—spelling, reading, writing, arithmetic, and common needle-work.

“ Every teacher shall keep a daily register of the scholars, which shall be open for inspection at all times ; a visitor's Book, and enter therein the visits of the Inspectors, Trustees, and School Committee, respectively ; maintain proper order and discipline, and carry out the regulations made for his guidance.

“ Every teacher shall take diligent care and exert his best endeavours to impress upon the minds of the children committed to his care, the principles of christianity, morality, and justice, and a sacred regard to truth and honesty, love of their country, loyalty, humanity, and a universal benevolence, sobriety, industry, and frugality, chastity, moderation and temperance, order and cleanliness, and all other virtues which are the ornaments of human society ; but no pupil shall be required to read or study in or from any religious book, or join in any act of devotion objected to by his parents or guardians ; and the Board of Education shall, by regulation, secure to all children whose parents or guardians do not object to it, the reading of the Bible in Parish Schools ; and the Bible, when read in Parish Schools by Roman Catholic children, shall, if required by their parents or guardians, be the Douay version, without note or comment.”

Provision is then made for Provincial assistance for support of Superior Schools and Libraries ; and the subsequent sections of the Act provide for assessment whenever the majority of rate-payers in any County, Parish, District or Municipality determine to provide for the support of Schools therein by assessment, with a provision that any District School supported by assessment shall be free to all the children residing therein. As these latter sections do not touch the questions we are discussing, it is unnecessary to refer to them more particularly. This Act was amended by the Act 26th Vic. cap. 7, which, however, merely gives to the Board of Education authority to order a re-division of Districts improperly divided, and to limit the number of teachers, &c. This, then, was the

state of the law relating to Parish or Common Schools at the time of the passing of "The British North America Act, 1867," and continued so until repealed by "The Common Schools Act, 1871;" and because it is alleged that rights and privileges secured by or enjoyed under this Act have been prejudicially affected by 'The Common Schools Act, it is contended that the latter Act is void.

The Parish School Act clearly contemplated the establishment throughout the Province of Public Common Schools for the benefit of the inhabitants of the Province generally; and it cannot, we think, be disputed, that the governing bodies under that Act were not in any one respect or particular, 'denominational.' The Board of Education was the Governor and Council, with a Superintendent appointed by them. The Trustees were elected or appointed as the case might be, as *other* Parish officers, and they were put in other respects on precisely the same footing as other Parish officers; and the School Committee was elected by the rate-payers; and in nothing pertaining to the organization, regulation or government of the schools, had any class of persons or denomination whatever, as such, the slightest voice or right of interference. The Board of Education, on behalf of the inhabitants of the Province at large, being responsible for the general working of the system, and the Trustees and School Committees having the management and direction of certain matters, under the Board of Education, in the particular localities for which they were respectively elected, but (without reference) so far as can be gathered from the Statute, in any or either case to class or creed.

The schools established under this Act, were then, Public Parish or District Schools, not belonging to or under the control of any particular denomination; neither had any class of persons nor any one denomination—whether Protestant or Catholic—any rights or privileges in the government or control of the schools, that did not belong to every other class or denomination, in fact, to every other inhabitant of the Parish or District; neither had any one class of persons or denomination, nor any individual, any right or privilege to have any peculiar religious doctrines or tenets exclusively taught, or taught at all in any such school. What is there then in this Act to make a school established under it a denominational school, or to give it a denominational character? A good deal has been said as to the intention of the Imperial Parliament in using the words "Denominational schools," in sub-section (1). There seems to be no difficulty in giving a legal construction or definition to these words, if they are read in their ordinary sense. It is a well-established canon of construction, that an Act is to be construed according to the ordinary and grammatical sense of its language, if precise and unambiguous; and it is likewise a rule established by the highest appellate authority, that the language of a statute taken in its plain, ordinary sense—and not its policy or supposed intention—is the safer guide in construing its enactments. See *Philpott vs. St. George's Hospital*, (6 H. Lords Cases, 338; 3 Jur. N. S. 1269.) And in the great *Sussex Peerage Case*, (11 C. & F. 86: 8 Jur. 793), the Judges declared the law to be, that if the words of the Act are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense; that the words themselves do in such case best declare the intention of the Legislature.

The 5th paragraph of section 8, of the Parish School Act, has been very strongly relied on, as establishing a right in respect to denominational schools. Under that paragraph, the teacher is most certainly enjoined to take diligent care, and exert his best endeavours to impress on the minds of the children committed to his care, *the principles of christianity, morality, &c., &c.* As we think it cannot be denied that the Schools under this Act were to be Public Parish Schools, for the benefit of all the inhabitants of the Parish or District in which they might be established, and the pupils attending the schools would necessarily, in a vast majority of cases throughout the Province, be children of parents belonging to different denominations; can it be supposed, with any reason, that the Legislatures could have intended that the teacher, who might possibly himself belong to a persuasion differing from all his pupils, should impress on the minds of his pupils the principles of christianity, by instructing each one in the peculiar doctrines of of the denomination of its parents? Still less, do we think it could have been intended,

that the principles of christianity to be impressed, should be those of a denomination to which any of the pupils did not belong, simply because they might happen to be those of a denomination to which the teacher, or even a large majority of his pupils, may have belonged. It seems to us, that in view of the entire scope, object, and policy of the Act, that the duty imposed on the teacher by the 5th paragraph of section 8, was a duty outside of the Educational teaching of the school, (which is specifically provided for in paragraphs 1 & 2), to be performed as opportunities occurred, by precept and example, rather than by any direct or continuous system of dogmatic teaching; that the principles of christianity, honesty, &c., to be impressed, were to be principles of general applicability, interfering with the peculiar religious views of none;—doctrines, precepts, and practices, which all christian people hold in common, rather than the dogmatic teachings or tenets of a particular denomination or sect. This view would seem to be strongly confirmed by the last clause of the 4th paragraph, because, while under the first clause of that paragraph, the duty referred to is to be discharged by the teacher in respect to all the children committed to his care, without any exception in favor of any class or creed; the provision in the last clause is—"but no pupil shall be required to read or study in or from any religious book, or join in any act of devotion objected to by his parents or guardians," leaving the duty still on the teacher "to impress on the minds of the children committed to his care, the general principles of christianity, morality, justice, a sacred regard for truth and honesty, &c., &c.;" and the paragraph ends by providing that the Board of Education shall, "by regulation, secure to all children whose parents or guardians do not object to it, the reading of the Bible in Parish Schools; and the Bible, when read in Parish Schools by Roman Catholic children, shall, if required by their parents or guardians, be the Douay version, *without note or comment.*" This paragraph, so far from making the schools denominational, or giving any rights or privileges in respect to a denominational school, appears to us to be directly opposed to the idea of denominational teaching in the schools. Does not the very last clause, (that most relied on at the argument, permitting the use of the Douay version, by the addition of the words "without note or comment," shew, that with the Bible read from that version, no denominational views of any kind shall be put forward; and is not the whole in this view entirely consistent with the exclusion from the School Library, and from use, of all works on controversial theology? But it has been said, that under the Parish School Act, schools were in fact established in certain localities where all, or a large majority of the rate-payers, happened to belong to one particular persuasion, in which the catechisms of particular Churches were taught, prayers peculiar to a particular religious body were used, and books inculcating the doctrines, views and practices of a particular denomination, were used as Class Books; and that these schools were therefore denominational, and consequently the class of persons belonging to any such denomination, had a legal right or privileges with respect to denominational schools. Assuming what is alleged to have been the case,—though on the point we have no information before us of which we can take judicial notice,—surely it is begging the whole question. How can the mere fact, that in exceptional cases, certain schools under the Parish School Act, drawing Provincial aid, may have been made for the time being, with or without the knowledge or sanction of the Board of Education, denominational, by reason of the teacher instructing the children exclusively in doctrines of a particular denomination, or using the prayers or books, or daily teaching the catechism peculiar to such denomination, confer any legal right or privilege on any class of persons with respect to denominational schools, or give the denomination whose tenets may have been so taught in any such schools, rights or privileges other than those possessed by all and every the humblest inhabitant of the Parish in which such school existed, free and independent of all denominational connection?

It is not by what the Board of Education, Superintendent, Inspectors or Trustees may have done or allowed to be done under the Act, nor is it from the mode in which the principles of Christianity may have been actually practically taught in one or a hundred schools which may have drawn public money under the Parish School Act, that the question in a legal view must be determined; we must look to the Law as it was at the

time of the Union, and by that, and that alone, be governed. Where then do we find any legal exclusive right or privilege conferred on any denomination to any school established or that might be established under that Act ; or any right or privilege conferred on any class of persons to deal with such a school as belonging to such persons as a class or denomination ; or as being under their control as such ; or that as a class they had any right to have taught therein, the peculiar doctrines of their denomination ? The assumption that the character or status of the school could be legally altered or affected, or rights gained by reason of the religious opinions or feelings of the inhabitants of a District, or a majority of them, because in such a case Trustees and a School Committee might perchance be elected from a particular denomination, and so that then the school might be made denominational, is in our opinion entirely erroneous. To the Board of Education is entrusted the controlling, governing power. By those rules and regulations, made and ordained within the letter and spirit of the Act, must all acts under them be controlled and governed, wholly independent of the religious opinions of the electors of the District, or of the Trustees elected by them. It appears to us, then, that in passing the Parish School Act, the Legislature contemplated a general system of Education for the benefit of all the inhabitants of the Province, without reference to class or creed ; that such schools were to be organized, regulated and governed by public bodies, not owing their existence to, or being in any way under the control of any class or denomination ; that the Act made no provision for any schools established thereunder being denominational, and did not provide that any sect or denomination whatever, as such, was in any such schools to have control or precedence, nor in any way give or recognize any right in any class of persons to have in the schools established thereunder, the doctrines, precepts or tenets of their denomination taught as part of the system of instruction, or to have such schools in any other respect denominational in their character. That with reference to religion, the Act simply recognized the duty of impressing on the minds of the pupils the general principles of christianity, honesty, &c., common alike to all christians ; and simply required to be secured by regulation the reading of the Bible as the inspired Word of God, accepted by all christians as the basis of their faith, securing always to the Roman Catholics the use, when read by Roman Catholic children, if required by their parents, the version recognized by their Church, but without note or comment : but at the same time, with the greatest apparent caution and scrupulous care, lest the religious principles of any should be interfered with, providing that even with respect to the inculcating the principles of christianity, morality, &c., as indicated, no pupil should be required to read or study in or from any religious book, or join in any act of devotion, objected to by his parents or guardians. And so, even with respect to the reading of the Bible, it is to be secured only to those children whose parents and guardians do not object. If, then, the establishment of denominational schools, or the teaching of denominational doctrines, was not recognized or provided for by the Act; and the Roman Catholics had therefore no legal rights, as a class, to claim any control over, or to insist that the doctrines of their Church should be taught in all or any schools under the Parish School Act, how can it be said (though as a matter of fact such doctrines may have been taught in numbers of such schools) that as a class of persons they have been prejudicially affected in any legal right or privilege with respect to " Denominational schools," construing those words in their ordinary meaning, because, under ' The Common Schools Act, 1871', it is provided that the schools shall be non-sectarian ?

But it is contended in this case, that the words " Denominational schools" were not used by the Legislature, and should not be construed by us in their ordinary grammatical sense and meaning, but should have a much broader interpretation. While freely admitting that though the general rule is, that every word must be understood according to its legal meaning, in construing an ordinary, as opposed to, a penal enactment, where the context shews that the Legislature has used it in a popular or more enlarged sense, Courts will so construe the language used ; we are at a loss to discover anything in " The British North America Act, 1867," indicating a legislative intention of using the words otherwise than in their ordinary meaning. It is clear enough that the reference in

sub-section 2 to separate and dissentient schools in Ontario and Quebec, is especially to schools of Protestants and Catholics ; and it is, perhaps, equally clear that sub-section 3 applies only to schools of a like character existing in any of the four Provinces. But we are at a loss to understand why sub-sections 2 & 3 should be held to control or in any way limit or affect a previous distinct enactment, couched in plain and unambiguous language, and which, by quite as clear and unequivocal terms, has relation to all classes of persons or denominations, and to all the Provinces of the Dominion ; or why, because separate and dissentient schools, as between Protestants and Roman Catholics, not only in Ontario and Quebec, but in any Province in which they may exist at the Union, or be thereafter established, are provided for and protected, therefore we must necessarily infer therefrom, that in using the term " Denominational schools" in sub-section 1, the Legislature intended to legislate only as between Roman Catholics and Protestants, and then also as to schools not necessarily denominational in the ordinary acceptation of the term. We think that the term " denomination" or " denominational" as generally used, is in its popular sense more frequently applied to the different denominations of Protestants, than to the Church of Rome ; and that the most reasonable inference is, that sub-section 1 was intended to mean just what it expresses, viz. : that " any" that is, every " class of persons" having any right or privilege with respect to denominational schools, whether such class should be one of the numerous denominations of Protestants, or Roman Catholics, should be protected in such rights. If it had been intended that the clause was to be limited in its application to Roman Catholics and Protestants, only as dissentient one from the other, and apply to schools other than those usually understood as denominational schools, is it not fair to presume that the Legislature would have used some expression in the sub-section itself indicating such a particular sense, especially as we have seen there were at the Union, in this Province at any rate, strictly denominational schools, both Protestant and Roman Catholic, to which a clause would be applicable ; and for the very reason also, that when dealing with schools as between Protestant and Roman Catholic in sub-sections 2 & 3, the language clearly confines it to those bodies respectively ?

But assuming that the term " Denominational Schools" is not to be construed in what has been called its narrow signification, perhaps the most favorable position to assume would be, to read the sub-section 1 as meaning substantially that nothing in any such law shall prejudicially affect any right or privilege which any class of persons, as a denomination, had by law with respect to schools in the Province at the Union. Let us endeavour to ascertain whether in such a case we would be justified in pronouncing the Common Schools Act, 1871, *ultra vires*, and therefore void.

Except in the matter of compulsory taxation, there is no very great difference in principle, that we can discover, between the Parish School Act of 1858, and the Common Schools Act of 1871. The general government, superintendence and control of the schools, are, under both laws, vested in a Board of Education almost similarly composed, the only difference being, that to the Governor and Council and Superintendent, is added the President of the University, under the latter Act ; in fact, the power to make Regulations for the organization, government and discipline of the schools, appointment of Examiners of Teachers, and the power of granting or cancelling licenses, and of making such Regulations as may be necessary to carry into effect the Act, and generally to provide for any exigencies that may arise under its operations, are precisely the same in both ;—(See sec. 4, paragraphs 3 to 10, of the Parish School Act, and sec. 6, sub-sections 4 to 8, of the Common Schools Act) : and the details are to be carried out by a Superintendent, Inspectors and Trustees, alike substantially under both Acts ; and the duties and powers of these officers do not in principle substantially differ. But there are, of course, differences. Those relied on are, that the Common Schools Act has no enactment similar to section 8 of the Parish School Act ; that the Parish School Act had no enactment similar to section 58, sub-section 12, of the Common Schools Act ; and this section, it is alleged, prohibits the granting Provincial aid to any but schools under the Common Schools Act ; and that by the 60th section of the Common Schools Act, all schools conducted under its provisions

shall be non-sectarian—a provision not to be found in the Parish School Act ; and it is contended, that the omission in the one case, and the express enactment in the other, prejudicially affect the rights and privileges which the Roman Catholics, as a class of persons and a denomination, had in the schools established or which might have been established under the Parish School Act ; in other words, that the rights and privileges which they had under the one, the omission and the enactments referred to, prevented their claiming or obtaining under the other.

With reference to the omission :—The Parish School Act no doubt declares that the Board of Education shall secure to all children, whose parents do not object, the reading of the Bible, and that when read by Roman Catholic children, if required by their parents, it shall be in the Douay version, without note or comment. Here, we have expressly directed to be secured to all children, what many persons no doubt consider a great right and privilege ; and Roman Catholic parents have a great right secured to them, viz., to have, if they require it, a particular version of the Bible read. As to the reason why a similar provision, securing these important rights in which Protestants and Catholics were both interested, was excluded from the Common Schools Act, it is not our business to inquire ; what we have to determine is, does this omission make the law void, if in other respects unobjectionable ? We think not. If this was a right or privilege which existed at the Union, the Legislature certainly have not protected it by any express enactment. But is the right taken away ? May it not still exist, provided always, it is a right which legitimately comes under sub-section 1, section 93 ? Because that section declares that nothing in any such law shall prejudicially affect any such right ; and in such case, reading the Common School Law by the light of this section, would it not be the duty of the Board of Education under the Common Schools Act, instead of making Regulation 21, declaring as follows :—that “ It shall be the privilege of every Teacher to open and “ close the daily exercises of the school by reading a portion of Scripture (out of the “ Common or Douay version, as he may prefer), and by offering the Lord’s Prayer—any “ other prayer may be used, by permission of the Board of Trustees ; but no teacher “ may compel any pupil to be present at those exercises, against the wishes of his parents “ or guardian, expressed in writing, to the Board of Trustees ;” to secure by Regulation just what the Board of Education were bound to secure under the Parish School Act of 1858 ; that is, to make just such a Regulation as the Parish School Act required to be made ? We have seen they have precisely the same, and only the same powers to make Regulations, as the Board had under the Parish School Act. By this simple means, the rights of all the children and their parents in the Province—as well Protestant as Roman Catholic—which existed at the Union, would be preserved, and all just cause of complaint on this head removed. Why the Board of Education should have departed from the principle and policy of the Parish School Act, and taken from the parents of all the children of the country—Protestant and Roman Catholic alike—the great boon and privilege of insisting on the Bible being read in schools, as they have done, and should have conferred on the teacher, not only the privilege of reading the Bible or not as he likes, but out of the Common or Douay version—not as the children or their parents may choose, but as the teacher may prefer, though he cannot compel the attendance of the pupils,—is not for us to attempt to explain ; we simply point out the fact. But if the right secured by the Parish School Act is protected by ‘The British North America Act, 1867,’ we fail to see, because the Board of Education may not have made such a Regulation as they ought in such case to have made, or have made a Regulation they ought not to have made, that the action of the Board, or its non-action, can render the Act of the Legislature inoperative.

If the right and privilege falls under section 93, and if there is no power to compel the Board of Education to make such a Regulation, or the Legislature should have inserted a clause in the Common Schools Act, requiring them to do it, is not this just a case where sub-section 4, of section 93 of ‘The British North America Act, 1867’ applies ? viz :—“ In case such Provincial Law, as from time to time seems to the Governor General “ in Council requisite for the due execution of the provisions of this section is not made,

"then as far only as the circumstances of the case may require; the Parliament of Canada may make remedial laws for the due execution of the provisions of this section." In this connection we may refer also to the 20th Regulation, which, it has been contended, prejudicially affects the rights and privileges which the Roman Catholics had under the Parish School Act. This Regulation declares that "symbols or emblems distinctive of any national or other society, political party, or religious organization, shall not be exhibited or employed in the school room, either in its general arrangement or exercises, or on the person of any teacher or pupil." It may be that the Board of Education have disregarded the general policy of the Common Schools Act, and interfered with the rights of teachers, parents and children, in excluding from the schools alike teachers and pupils, who may exhibit on their persons, in dress or ornament, symbols or emblems distinctive of any national or other society, political party, or religious organization: for, however clear the right of the Board of Education may be to make regulations necessary for the good government and discipline of the schools; to make arbitrary, restrictive regulations, as to the dress or personal adornment of the teachers and pupils, or which are calculated, unnecessarily to interfere with the feelings, national, social, or religious, in matters not calculated to give any just cause of offence to others, or to interfere with good order in the schools, is quite another question. And while it is by no means clear to us, that any power exists in the Board of Education, under the Common Schools Act, by regulation, to deprive Teachers, parents, and children, of their right of access to the Free Schools of the country, to the support of which they, and all others, are forced to contribute, unless they submit to such regulations; and though the assumption of such a power of practical expulsion by the Board of Education, raises a question involving important and delicate rights,—rights which, in this land of civil and religious freedom, few may be willing to see infringed—or at any rate, raising discussions which must be unpleasant to those engaged in them, and calculated to result in consequences which can scarcely fail to produce acrimonious feelings, and in the end be injurious to the cause of Free Education, which we must presume the Regulation objected to was intended to further; all we can say is, as the case stands, the Regulations are not before use in such a way that we can deal with them, and therefore we are not called upon to express any decided opinion as to their validity, because the constitutionality of the Act cannot, in our opinion, be affected by any regulation made under it, there being nothing unconstitutional in the Act itself, that we can discover.

The second objection is easily answered. The provision in sec. 58, sub-sec. 12, of the Common Schools Act, declaring that no public funds shall be granted, would seem to apply to the schools particularly referred to in the preceding part of that section, and not to all schools. But, if it was intended to apply generally to all schools, as Mr. Duff's argument assumes, what does it amount to? It cannot take from the Legislature the right to make such grants. Thus, we see in the estimates of the year 1872, grants were recommended by the Lieutenant Governor, and no doubt made, for all the denominational schools before specifically referred to (see Journals of House of Assembly, page 124); and if such a clause was *ultra vires*, and we declared it void—*cui bono*? It would not affect the other parts of the Act, and what would practically be attained? The Legislature could, whether the clause stands or is declared void, do just as it pleases about granting or withholding the public funds.

But it is contended that the 60th section, declaring "that all schools conducted under the provisions of this Act shall be non-sectarian," prejudicially affects the rights and privileges which the Roman Catholics, as a class, had in the Parish Schools at the time of the Union. It cannot be denied that to the Provincial Legislatures is confided the exclusive right of making laws in relation to Education; and that they, and they only, have the right to establish a general system of Education, applicable to the whole Province, and all classes and denominations, provided always they have due regard to the rights and privileges protected by section 93 of 'The British North America Act, 1867.'

Now, what in this case, is the right or privilege claimed to have been prejudicially affected? Is it a legal right or privilege that could have been put forward and enforced

by the Roman Catholics, as a class, under all circumstances and in every Parish or Common School ; or is it a legal right confined to the Roman Catholics as a body ; or does it belong equally to all and every of the other denominations of christians in this Province, and capable by them of enforcement ; or, on the contrary, was it not the mere possible chance of having religious denominational teaching in certain schools, dependent entirely on accidental circumstances ; as, on what might happen to be the religious views of the majority in a Parish, and then on the accidental result of the election of Trustees and School Committee, and on the views of the parties so elected, as to religious denominational teaching, and their willingness to permit it in the schools, (admitting that the Trustees or Committee had any discretion in the matter, which perhaps is more than doubtful) ; was it not also dependent on the Board of Education, who had the general controlling power ? If, dependent on circumstances such as these, how can it be considered such a legal right as could have been contemplated by the Imperial Parliament in passing the 93rd section of 'The British North America Act, 1867' ? Where is there any thing that can, with any propriety, be termed a legal right ? Surely the Legislature must have intended to deal with legal rights and privileges. How is it to be defined—how enforced ?

It by no means follows as a necessary legal consequence, that because a majority of the inhabitants of a Parish or School District may belong to a particular persuasion, they would necessarily vote for Trustees favorable to denominational teaching, nor could they be compelled by any legal process so to vote ; nor does it follow that Trustees when elected even by a majority of one denomination, would necessarily prove favorable to denominational teaching ; and by what legal process could they be constrained to assent to its introduction in the schools ? And again, suppose up to this point all were favorable, might not the whole scheme be ignored by the Board of Education ; and how then could any class of persons, as such, no matter to what denomination they may belong, claim of right to control or direct the acts or doings of any of these parties ; or how could Electors, Trustees, School Committees, or the Board of Education, be compelled to make any school in any sense denominational, or in other words, to confer on any such class denominational rights ? Surely the rights contemplated, must have been legal rights : in other words, rights secured by law, or which they had under the law at the time of the Union. If any such existed they must have been capable of being clearly and legally defined, and there must have existed legal means for their enforcement, or legal remedies for their infringement ; for it is a clear maxim of law, that *ubi jus ibi remedium*. It was said long ago in a celebrated case, that if a man has a right, he must have a means to vindicate and maintain it, and a remedy if he is aggrieved in the exercise and enjoyment of it ; and that it was indeed a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal. What possible legal means could any denomination have invoked under the old Parish School Act, to compel any one school to be made denominational, or to require and insist that in any one school denominational tenets, doctrines, precepts or practices, should be taught or used ? But then it was repeatedly urged upon us, that under the Parish School Act, circumstances might and very often did concur, where schools might, and in numerous cases did, become denominational ; but that by reason of section 60 of the Common Schools Act, such was not now possible. The answer is simply this ; the inability of a class of persons to have under the Common Schools Act, that which possibly they might under certain exceptional and accidental circumstances have had under the Parish School, Act of 1858, but which they had no right to insist on having, is a damage not occasioned by any thing which the law esteems an injury,—a kind of damage termed in law, *damnum absque injuria*, and for which there is no remedy. And so, in this case, as there was no legal right to have denominational schools or denominational teaching, there is no injury in legal contemplation committed, by the legislature dealing with the question in such a manner as to prevent the possibility arising, and consequently no right to have the action of the Legislature abrogated. It may be a very great hardship, that a large class of persons should be forced to contribute to the support of schools to which they are conscientiously

opposed, or be shut out from what they have hitherto under certain circumstances enjoyed, and be without remedy ; but by any such considerations, Courts of Justice ought not to be influenced : hard cases it has been repeatedly said, are apt to make bad law ; and it has also been justly remarked, that if there is a general hardship affecting a general class of cases or persons, it is a consideration for the Legislature, not for a Court of Justice.

FISHER, J.

I concur in the judgment of my brethren, as to the constitutionality of The Common Schools Act, 1871 ; but as there are some sentiments in it in which I do not agree, I have thought in a matter of so much delicacy and importance, it was better to read the judgment that I had written, than attempt to qualify opinions which my brethren had so fully considered.

The right to impose this assessment is objected to on the ground that it includes a sum for the support of schools under the authority of the Act relating to Common Schools, 34 Vic. cap. 21, which it is contended is unconstitutional ; that the Legislature have no power to pass it, because it contravenes the exception in the Act of Union.

By the 93rd section of "The British North America Act," it is declared—"That in and for each Province the Legislature may exclusively make laws in relation to Education, subject and according to the following provision :—

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to Denominational Schools, which any class of persons have by law in the Province at the Union.

"(2) All the powers, privileges and duties, at the Union by law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

"(3) Where in any Province a system of Separate or Dissident Schools exists by law at the Union, or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any act or decision of any Provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education.

"(4) In case any such Provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any Appeal under this section is not duly executed by the proper Provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

The exclusive power of legislating upon the subject of Education is thus conferred upon the Legislature of each Province, subject to the reservation of the rights of any class of persons with respect to Denominational Schools.

Every one acquainted with the history of the Provinces which comprised Canada before the Union knows the reason for the insertion of some of the provisions of this section. It was found to be the only mode of solving a question that had caused serious difficulty with the Government and Legislature of that Province.

Paragraphs two and three were constructed to soothe and settle these difficulties, and at present only apply to that Province, now consisting of Ontario and Quebec, where Schools were in operation at the Union answering the description given them in these paragraphs.

Whether the fourth paragraph applies to any other law than such as is referred to in the third paragraph, it is not necessary to consider, as the constitutionality of the School Act depends entirely upon the meaning of the first paragraph.

The simple question for solution is, does the Common Schools Act, 1871, prejudicially affect any right or privilege, with respect to Denominational Schools, which any class of persons had by law in the Province at the time of the Union ? It is not merely

a right or privilege. A denominational right or privilege of itself, if any such existed, would not alone make the Common Schools Act unconstitutional. It must be a right or privilege with respect to a Denominational School, which a class of persons had by law at the Union which is prejudicially affected by this Act, to render it unconstitutional.

It appears to me that the first inquiry is:—What is a Denominational School? In my opinion, it is a School under the exclusive government of some one denomination of Christians, and where the tenets of that denomination are taught. But assume that a School answering either of these requisites is a Denominational School, and this is the lowest ground upon which it can be put, and then examine the laws in force at the time of the Union, to ascertain if any such School then existed by law, and if the right of any class of persons therein has been prejudicially affected by the Common Schools Act.

There were Denominational Schools in existence at the Union, such as the Varley School in St. John, the Sackville Academy, the Madras School, and the like; but they are not touched by the Common Schools Act, 1871; they remain in the enjoyment of all the rights they had at the Union.

The Act 20 Vic. cap. 9, intituled, “An Act relating to Parish Schools,” with some unimportant amendments not affecting the present question, was in force at the Union. As it has been superseded by the Common Schools Act, 1871, which is objected to, we must refer to its provisions to ascertain whether it authorized any denominational school; for if it did not, then the Act under consideration has not in any of its provisions prejudicially affected any right or privilege any class of persons enjoyed at the Union.

The very title of the Act proclaims its unsectarian character as fully, to my mind, as the positive enactment in the Act of 1871, that the schools conducted under its provisions should be non-sectarian—a useless provision in an Act which alone provided for the establishment of such schools.

Parish schools—that is, schools in and for every parish in the Province, according to the political divisions of the Province into counties, towns, and parishes, distributed and sustained by public aid according to the population and extent of each parish—the number and classes of the schools must, in the very nature of things, be other than denominational.

I will now refer to the provisions of the Act, and see if there is any authority for the establishment of a denominational school under it, or any countenance in the Act for such a school.

The Governor in Council appoints the Superintendent of Schools, who, with the Governor and three members of the Executive Council, constitute the Board of Education. The inspection of the schools is done altogether by political agency. The Governor in Council is authorized to divide the Province into four Districts, and appoint one Inspector for each District.

The Board of Education, a purely political body, make rules and regulations for the organization and government of the schools, and such other regulations as may be deemed necessary to carry the Act into effect. There was no restriction whatever upon the power of the Board in this respect. The Board regulates the mode of licensing, examining, classifying, and paying the teachers, and prescribes the duties of the Inspectors.

The Superintendent, a political officer, has the general direction and supervision of the schools, subject to the order of the Board.

Each parish was to be divided into School Districts by three Trustees, annually elected by the rate-payers, at the same time and in the same manner as other town or parish officers were elected, and subject to the same penalties and disabilities, with the same provision for appointing them in case of failure in the election. They employ the teachers, and may dismiss them, subject to an appeal to the Board of Education. They are to examine the schools, and apportion the money raised by assessment, when so raised, amongst the different schools.

Each school was under the immediate supervision of a School Committee, elected annually by the rate-payers of the District. They were empowered to admit free scholars, and children of poor parents at a reduced rate.

The law also provided for a Superior School in each parish, thus also supplying the means for higher education.

The Teachers, both male and female, were divided into three classes, with an appropriate allowance to each class from the Provincial Treasury, and with duties, as to the subjects taught, prescribed in the Act for each class.

It provided for a School Library in each District, by a money grant in aid of the amount raised in the locality for that purpose, and placed the selection of books under the control of the Board of Education; but expressly excluded works of a licentious, vicious, or immoral tendency, or hostile to the christian religion, or works on controversial theology. This is the only part of the law in which anything of a denominational character is referred to in any way; and it shews how jealous the Legislature was in guarding the law, and in preserving the schools from any denominational or sectarian tendency. Provision was made for the education of the children of the whole people, in schools of every grade, and by teachers of both sexes; and by the Superior School, the wants of higher education were provided. The whole machinery of the Act is designed to make the schools common to the child of every man, irrespective of his religious opinions. The Act recognizes the agreement of the inhabitants of any locality with a teacher licensed by the Board of Education, when they have provided a sufficient school-house and secured the necessary salary, raised by voluntary contribution or tuition fee. It contains provision for voluntary assessment in the District, Parish or County where the rate-payers determine to adopt that mode of supporting the schools; and in such case the schools are declared to be free to the children of all the inhabitants.

The system is prescribed by the Board of Education; the localities take an active part in the establishment and government of the schools, subject to the general control of the Government.

The local agency is exercised, and the local officers appointed, in the same manner as for the government and support of the poor, the highways, or any other local or parochial object. Neither class, creed, nor color, affect or influence the one more than the other. The only qualification for the electors of any officer is that they are to be rate-payers upon real or personal property, or income. No class or creed had, under the Act, any peculiar right, either in the general government of the whole Province, or in any Parish or school.

Now, when all this machinery for working the Act relating to Parish Schools had been made, is it not a striking proof of the determination of the Legislature to avoid the very thing which it is contended the Act authorizes; by restricting the power of the Board of Education to make rules and regulations in this respect, and expressly excluding from the School Libraries works hostile to the christian religion, or works on controversial theology; while it left the inhabitants free to elect their local agents, who should employ the teachers, and look after the schools. To secure to every man, and the child of every man, a just equality with regard to his religious faith, it enacted, in effect, that the great leading principles of christianity should be inculcated in the schools; but there should not be in the Library a book upon controversial theology, or, in other words, with denominational teaching.

What sort of denominational school would that be, where the master would not be aided in his dogmatic teaching by the writings of men of his own faith? When a denominational school is established, how strictly this is provided for. Take any one of the Acts on our Statute Book, and examine its provisions. I will refer to the Act incorporating the Trustees of the Wesleyan Academy at Mount Allison, Sackville, (12 Vic., cap. 65); the 11th section is as follows:—

“No person shall teach, maintain, promulgate or enforce any religious doctrine or practice in the said Academy, or any department thereof, or in any religious service held upon the said premises, contrary to what is contained in certain Notes on the New Testament, commonly reported to be the Notes of the said Rev. John Wesley, A. M., and in the first four Volumes of Sermons, commonly reported to have been written and published by him.”

Take the Charter of the Madras School, or any other Act, and the same strict provision for dogmatic teaching is made. I pass by the Colleges, which were referred to by the Counsel on the argument on this rule, as not material to the inquiry, if they are within the category contended for.

I can hardly imagine any stronger illustration of the principle that pervades the whole Act relating to Parish Schools, than the language of the eighth paragraph of the fourth section, which thus restrains the large legislative power of the Board of Education. It is as follows :—

“To provide for the establishment, regulation and government of School Libraries, and the selection of Books to be used therein ; but no works of a licentious, vicious, or immoral tendency, or hostile to the christian religion, or works on controversial theology, shall be admitted.”

It has been urged, that the sixth paragraph of section 8, countenanced denominational teaching. I think no one can read that section, and fail to discern that it enacts the very contrary. The words of the paragraph are :—

“Every teacher shall take diligent care, and exert his best endeavors to impress on the minds of the children committed to his care, the principles of christianity, morality, and justice, and a sacred regard to truth and honesty, love of their country, loyalty, humanity, and a universal benevolence, sobriety, industry and frugality, chastity, moderation and temperance, order and cleanliness, and all other virtues which are the ornaments of human society.”

Surely it cannot be disputed that this can be done without any denominational teaching, or, in the language of the statute, without entering upon controversial theology.

There are certain great fundamental principles of christianity, common to all, that may be enforced, without trenching upon debatable ground. Take the Sermon on the Mount, or any of the lessons of the Great Teacher himself, for example.

To avoid any abuse of this duty or privilege of the teacher in the Parish Schools, the Legislature proceeds further to enact—“but no pupil shall be required to read or study in or from any religious book, or join in any act of devotion objected to by his parents or guardians.” Here is a positive enactment against denominational teaching.

Knowing it to be possible for a designing teacher, under color of the authority to impress upon the minds of the children the principles of christianity, and all other virtues, stealthily to teach doctrines of a denominational or sectarian character, and to protect the child from the influence of such teaching, the parents are empowered to interfere and withdraw the child from any such teaching, or from joining in any act of devotion having such a tendency.

The paragraph then proceeds thus—“and the Board of Education shall, by regulation, secure to all children whose parents or guardians do not object to it, the reading of the Bible in Parish Schools.”

What is there denominational in thus inculcating the principles of christianity, and all other virtues which are the ornaments of human society? What better mode could be adopted than by reading portions of the Bible? It certainly is not a denominational Book. It is the common standard of faith and practice to all christians. To it they all appeal. Where are such enobling thoughts as in the Bible? It is said to be an historical fact, that when the question of reading the Bible in the Common Schools of one of the cities on this continent was debated, the Jews voted for it, on the ground that it was well adapted to the instruction of children, because of the sublime principles of morality it contained.

Though the Bible is regarded as the great charter of our salvation, as the revelation of the will of God to man, eminent Divines in one branch of the Church Catholic object that some words, some expressions, some sentences, are incorrectly rendered in our ordinary English version, and recognize another version as being a more correct interpretation, of such words, expressions and sentences.

The Legislature, with the same object of preventing any denominational right, enacts-- "and the Bible, when read in Parish Schools by Roman Catholic children, shall, if required by their parents or guardians, be the Douay version, without note or comment;" the very words "without note or comment," of themselves, are significant proofs of the intention of the Legislature.

Assuming that the Bible is a denominational book, and I cannot think anyone will seriously contend that it is, and that this provision created a right-- a denominational right if you please--that will not help the *ultra vires* argument, because if it were so, it is a right or privilege which a class of persons had by law at the Union, to have the Bible read in a Parish School, not in a Denominational School, and that is not a right secured by "The British North America Act, 1867," even if it existed.

I have endeavoured to ascertain the true construction of the Act relating to Parish Schools, as the only Act affecting the question; I include the amendments, which are not important. Every other Act which confers upon any denomination a right or privilege with respect to Denominational Schools, is left unrepealed, so that no right or privilege enjoyed by any class of persons under any such Act is prejudicially or in any way affected by the Act under consideration.

I will now refer very briefly to the 34th Vic. cap. 21, intituled, "An Act relating to Common Schools." It is substantially the same as the Act of 1858, relating to Parish Schools.

The Board of Education is the same, with the addition of the President of the University. It has the same large powers.

The duties of the Superintendent are the same.

The number of inspectors is increased, with smaller Districts for each, but with duties very similar to what they discharged under the old law.

The Trustees are appointed in the same manner as under the old law, and discharge much the same duties, including the duties of the School Committee.

The Teachers are classified and paid as in the old law. Superior Schools are provided for, and Libraries, upon the same principle. The only real difference that I can discover, arises from the different modes of supporting the school.

Under the Act of 1871, the portion of the support furnished by the inhabitants is raised by assessment; and in the machinery and provision necessary for working this out, and the different modes of paying and supporting the schools, that it involves, is the only difference. In other respects, this Act provides for the attainment of the same object by the same means.

It is said that there is no provision requiring the reading of the Bible in the schools. The Board of Education may by Regulation provide for it, as in the Act relating to Parish Schools. If it were otherwise, it would not help the *ultra vires* argument, unless the schools could be shewn to be denominational.

Upon the argument, it was contended that some of the Regulations interfered with the rights of a class of persons. I confess I was unable to discover the bearing of that argument upon the question. How, if the law were good, a bad Regulation--if such there was--would affect it? Assume that this contention is correct, and that it prejudicially affects the right that a class of persons had at the Union, such a right, if it existed, is not saved by "The British North America Act, 1867"; because it would be a right or privilege with respect to a Parish School, and not to a Denominational School.

I cannot discover that the Regulations have any thing to do with the question of the power of the Legislature to pass the Act, or can form any guide in the interpretation of it. It appears to me that under either of the Acts of 1858 or 1871, it was competent for the Board of Education to make any of the Regulations referred to; whether they exercised their powers wisely or unwisely, under the Act of 1871, is another question.

The propriety of the Regulations objected to is a question of public policy, upon which I am not called upon to express an opinion. I may, as an individual, entertain a very strong opinion as to its policy. As a Judge, all I feel called upon to do is to consider its legality, and for myself, on that point, I entertain no doubt.

I am therefore of opinion that the Rule should be discharged.

WETMORE, J.

While fully concurring in the opinion of my learned Brethren as to the constitutionality of "The Common Schools Act, 1871," I do not wish to be understood as expressing a participation in any doubt whatever as to the Regulations of the Board of Education.

I think the only question properly before the Court is, as to the Act itself, and not as to the Regulations. We are only called upon to decide whether or no, the Schools Act, or any part of it, is *ultra vires*; and upon the decision, the Assessments, to set which aside the application is made, are to be affected.

If the Act itself is not *ultra vires*, I do not see how the promulgation of any Regulation, even supposing it to be one which the Schools Act would not warrant, or to be in violation of the provisions of section 93, sub-section 1, of "The British North America Act, 1867," can affect the case, any more than Assessors acting in violation of the law under which an Assessment is imposed, would affect the law authorizing the Assessment. In such case, if the Assessment is imposed in a manner not warranted by law, parties aggrieved would have their remedy for obtaining relief; and so, with reference to a Regulation sought to be established by the Board of Education. If that body should exceed the power given by law in such case, the Regulation would not have the support of law to uphold it, and therefore could not be maintained; but the law, nevertheless, would remain in full force and authority.

The application to this Court is simply to set aside an Assessment in consequence of the invalidity of the Law; it does not touch the Regulations; and though they have been referred to by Counsel in the argument, it does not seem to me they are before us in such a way as to call for a decision, or the expression of an opinion upon any one of them. Indeed, I do not see that a most positive and direct expression by the Court, as to the legality or illegality of any of the Regulations, would in the slightest degree affect the constitutionality or unconstitutionality of the Law; and I therefore purposely abstain from expressing my opinion upon any one of the Regulations. Should a question arise respecting the Regulations, or should a decision upon them be necessary for any other matters before the Court, then, of course, I would be required to express my opinion; until it does arise, I decline doing so: to use an expression of Cockburn, C. J. in *Rimini vs. Van Praagh*, (L. Rep. 8 Q. B. 4.) "It will be time enough to do so, when the necessity arises."

Rule for a *Certiorari* discharged.

MESSAGE.

DUFFERIN.

The Governor General transmits, for the information of the House of Commons, Copy of a Despatch, dated 10th April, 1873, from Her Majesty's Secretary of State for the Colonies, enclosing a further Report from the Law Officers of the Crown on the subject of the New Brunswick School Law.

GOVERNMENT HOUSE,
OTTAWA, 5th May, 1873.

The Secretary of State for the Colonies to the Governor General.

(Copy.)—Canada, No. 112.,

DOWNING STREET,
10th April, 1873.

MY LORD,—With reference to your Lordship's Despatch, No. 72, of the 13th March and to previous correspondence, I have the honor to transmit to you here-
April 7, 1873. with, a Copy of a further Opinion of the Law Officers of the Crown on the subject of the Act passed by the Legislature of New Brunswick, in 1871, relating to Common Schools.

I have, &c.,
(Signed,) KIMBERLEY.

Governor General, The Right Honorable,
The Earl of Dufferin, &c., &c., &c.

The Law Officers to Lord Kimberley.

(Copy.)

TEMPLE, April 7th, 1873.

MY LORD,—We are honored with Your Lordship's commands, signified in Mr. Herbert's letter of the 31st March ultimo, stating, that he was directed by Your Lordship to transmit to us copies of two Despatches from the Governor General
35—1 Feb., 1873. of Canada, with their enclosures, relating to the Act of the Provincial
72—13 March, '73. Legislature of New Brunswick, passed in May, 1871, relating to Common Schools; and that he was desired to refer us to the opinions given by us in reference to that Act, dated the 29th of November, and 12th of February last.

Mr. Herbert was pleased further to say, that he was to request that we would take those further papers into consideration and favour your Lordship
To Atty. and Sol. Genl., 25 Nov. 1872. with our opinion upon them, and that he enclosed copies of the
To Atty. and Sol. Genl., 11th Feby. 1873. papers on which our previous opinions were given.

In obedience to your Lordship's commands, we have the honor to Report,—That we have reconsidered this case with special reference to the further papers now sent, and we see no reason to alter or modify the opinion which we have already submitted to Your Lordship on this subject.

We have, &c.,
(Signed,) J. D. COLERIDGE,
" J. JESSEL.

The Right Honorable
The Earl of Kimberley, K. G., &c., &c., &c.



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